

NOTICE OF PENDENCY – WIT STATE MANDATE CLASS

**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 PENDENCY OF CLASS ACTION

TO: Any member of a fully-insured health benefit plan governed by both the Employee Retirement Income Security Act (“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 United Behavioral Health (“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 (the “*Wit* State Mandate Class”).

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

**PLEASE READ THIS NOTICE CAREFULLY – YOUR RIGHTS MAY BE
AFFECTED BY A CLASS ACTION LAWSUIT PENDING IN THIS COURT**

You are receiving this Notice because your rights may be affected by a class action lawsuit regarding your request for insurance coverage of residential treatment services. The lawsuit is pending in federal court in San Francisco, California (the “Court”). The Court has ordered this Notice be sent to you. The purpose of this Notice is to inform you how the lawsuit may affect your rights and what steps you may take. This Notice is not an expression by the Court of any opinion as to the merits of any of the claims or defenses asserted by either side in this lawsuit.

Additional copies of this Notice may be found on the internet at: www.UBHGuidelinesClassAction.com.

1. Why should I read this notice?

The Court has certified two classes in the above-captioned case. These classes consist of individuals whose claims for insurance benefits for residential treatment of a mental illness or substance use disorder were denied by UBH, based upon UBH’s Guidelines, during certain time periods. The *Wit* State Mandate Class, of which you may be a member, is more fully described below. You may be entitled to participate in any benefits that may eventually be obtained for the class as a result of this lawsuit. There is, however, no assurance that a judgment in favor of the class will be granted.

This notice provides a summary of the lawsuit. It also describes who is eligible to be included in the *Wit* State Mandate class, the effect of participating in this lawsuit as a class member, and how to request exclusion from the class.

2. What is this lawsuit about?

This is a civil lawsuit filed in the United States District Court for the Northern District of California. The complaint names as defendant United Behavioral Health (operating as OptumHealth Behavioral Solutions).

On September 19, 2016, the Court appointed Brandt Pfeifer as Class Representative for the *Wit* State Mandate Class.

2a. Plaintiffs’ claims.

Plaintiffs assert claims under ERISA, a federal statute. Plaintiffs claim that UBH violated ERISA with respect to the *Wit* State Mandate Class in two ways: (1) by creating and adopting its own coverage criteria (its “Guidelines”) for its use

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in adjudicating claims for insurance benefits for residential treatment of substance use disorders, instead of adopting the coverage criteria mandated by state law; and (2) by using its Guidelines to deny the Class members' claims for benefits for residential treatment of substance use disorders, instead of the Guidelines that were mandated by state law, which made the denials arbitrary and capricious.

Plaintiffs are asking the Court (a) to declare that UBH's use of its Guidelines was inconsistent with the relevant state law mandates; (b) to order UBH to use the appropriate state-mandated Guidelines going forward; (c) to order UBH to reprocess the Class members' claims for benefits using the appropriate state-mandated Guidelines; (d) to order UBH to pay a surcharge to the Class members in the amount of the revenue UBH earned for administering the Class members' claims; and (e) to order UBH to pay attorneys' fees and costs to the Plaintiffs' lawyers. If the Court orders UBH to reprocess Class members' benefit claims, that reprocessing could result in a different coverage decision and additional payment of benefits, but there is no guarantee that UBH will approve any Class member's request for coverage or pay additional benefits as the result of reprocessing.

2b. UBH denies liability.

UBH denies any wrongdoing or liability for the claims alleged.

UBH denies that it did anything wrong and denies that it breached any fiduciary obligations to Class members when it developed and adopted its Guidelines. UBH contends that its Guidelines are consistent with generally accepted standards of care, are consistent with the terms of each Class member's health benefit plan, and do not need to be rewritten.

UBH also denies that it abused its discretion as a benefit plan administrator when it denied Class members' requests for coverage. UBH asserts that its decisions to deny Class members' requests for coverage were based on, as appropriate, applicable state law, the terms of each Class member's health benefit plan, the circumstances of each Class member's clinical situation, the sound clinical judgment of its reviewing clinicians, and generally accepted standards of care, including but not limited to generally accepted standards of care reflected in UBH's Guidelines and any guidelines mandated by state law. UBH maintains that it appropriately denied Class members' requests for coverage in whole or in part because Class members were not entitled to some or all of the benefits they requested under the terms of their individual health benefit plans, and that UBH complied with applicable state law in determining Class members' requests for coverage.

3. Who is a class member?

By Order dated September 19, 2016, as amended on March 9, 2017 and August 2, 2017, the Court certified the following class of plaintiffs in this case:

The "***Wit* State Mandate Class**," which includes

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 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 June 1, 2017, 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. Who represents the class?

The Class Representatives and Plaintiffs' Counsel represent the *Wit* State Mandate Class and all of the Class members. The Court appointed two law firms as Plaintiffs' Counsel to represent the classes in this case. These firms are Zuckerman Spaeder LLP, 1800 M Street NW, Washington, D.C., 20036 and Psych-Appeal, Inc., 8560 West Sunset Boulevard, Suite 500, West Hollywood, CA 90069. Further information about this case may be obtained from these firms

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at www.zuckerman.com or www.psych-appeal.com. You may also contact Plaintiffs' Counsel at (202) 778-1800 or (310) 598-3690.

Plaintiffs' Counsel has agreed to pursue this lawsuit on a contingent-fee basis. Plaintiffs' attorneys' fees and expenses will be payable only in the event of a judgment or settlement in favor of the classes, if any, and will be subject to approval by the Court. Class members will not have to separately pay Plaintiffs' Counsel any additional amounts.

5. How to participate in this class action?

If you fall within the definition of the class set forth above, you are a class member. As a class member, you will be bound by any judgment or settlement, whether favorable or unfavorable, in this lawsuit. Thus, as a class member, you will be able to participate in any relief obtained in the case. Irrespective of whether the Plaintiffs win or lose, you will not be able to bring individual legal claims against UBH challenging UBH's Guidelines on the ground that they are inconsistent with generally accepted standards of care or challenging UBH's denial of your claim for benefits for residential treatment of a substance use disorder on the ground that UBH's use of its Guidelines rendered its decision arbitrary and capricious, nor will you be able to obtain any relief in connection with such claims other than the relief obtained by the Class. You will also be bound if an unfavorable judgment is rendered in favor of UBH.

IF YOU WISH TO REMAIN A CLASS MEMBER, YOU DO NOT NEED TO DO ANYTHING.

No judgment or settlement has occurred at this time. If you do not ask to be excluded from the Class now, you will not have the right to seek exclusion later, such as at the time of settlement or judgment. However, in the event of a settlement, as a Class member, you will have an opportunity to present an objection to the Court if you disagree with the terms of the settlement.

Any Class member who does not request exclusion may also enter an appearance through their own counsel at their own expense.

6. How to be excluded from the class?

If you wish to be excluded from the *Wit* State Mandate Class, you must submit a request for exclusion by following the instructions in the next paragraph. **IF YOU CHOOSE TO BE EXCLUDED: (1) you will NOT be entitled to share in any relief from any settlement or judgment that results from this lawsuit; (2) you will NOT be bound by any judgment or settlement release entered in this lawsuit; and (3) at your own expense, you MAY pursue any claims that you have by filing litigation.** Even if you choose to be excluded from the lawsuit, if the Court orders UBH to revise its guidelines, UBH may apply those revised Guidelines to your future claims.

To be excluded, you must send a written request for exclusion from membership in the *Wit* State Mandate Class to: UBH Guideline Class Notice Administrator, c/o Dahl Administration, PO Box 3614, Minneapolis, MN 55403. Your request must be **postmarked by September 8, 2017**. After that date, you will not have the right to be excluded from class membership. In order to be valid, your request for exclusion must (i) set forth the name and address of the person requesting exclusion, (ii) state that such person or entity requests exclusion from the classes in this lawsuit, and (iii) be signed and dated by such person or entity. Requests for exclusion must be mailed to the address provided below.

Only request exclusion if you do NOT wish to participate in this litigation and do NOT wish to share in any potential relief that might be obtained on behalf of the Class in this lawsuit.

Exclusion requests should be sent to:

**UBH Guideline Class Notice Administrator
c/o Dahl Administration
PO Box 3614
Minneapolis, MN 55403
(855) 234-7133**

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7. How and when will the Court decide who is right?

Plaintiffs will need to prove their claims at trial. The trial is set to start on Monday, October 16, 2017, in the United States District Court for the Northern District of California, San Francisco Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102, in Courtroom G. During the trial, the Court will hear all of the evidence and will reach a decision about whether the Plaintiffs or UBH are right about the claims and defenses in the lawsuit. There is no guarantee that the Plaintiffs will win, or that they will get any relief for the Class.

You do not need to attend the trial. Plaintiffs' Counsel and the Class Representatives will present the Plaintiffs' case, and UBH will present its defenses. You or your own lawyer are free to attend the trial at your own expense.

8. How to get more information?

Additional information about the Action, including copies of the Plaintiffs' Complaint, UBH's Answer, and the Court's Order Granting Motion for Class Certification, is available on the internet at www.UBHGuidelinesClassAction.com.

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.**

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PO Box 3614
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This Notice does not fully describe all of the claims and contentions of the parties. The pleadings and other papers filed in this lawsuit are available for inspection during business hours at the United States District Court, 450 Golden Gate Ave., 16th Floor, San Francisco, CA 94102.

9. Correcting your mailing address

If this Notice was sent to your correct mailing address, you do not have to do anything to receive further notices concerning this litigation. If this Notice was forwarded by the postal service, or if it was sent to an individual or address that is not correct or current, you should immediately contact the Notice Administrator at the address provided in paragraph 8, above.