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Into the Woods: Wilderness Therapy and the Mental Health Parity and Addiction Equity Act

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In this article, the authors explain that questions surrounding insurance coverage for wilderness therapy raise issues under the Mental Health Parity and Addiction Equity Act.

Mental health treatment has been the subject of increasing attention in recent years. The notion that mental health is equally important to physical health is becoming more commonly accepted. This has led to several new treatment methods to address mental health needs. One of the more popular mental health treatment methods, particularly among adolescents and young adults, is wilderness therapy. Wilderness therapy seeks to connect patients with nature over an extended period of time to resolve a number of mental health conditions. While wilderness therapy has grown in popularity, it has not been without scrutiny, particularly from health insurance providers, questioning the efficacy and necessity of wilderness therapy for coverage purposes.

Questions surrounding insurance coverage for wilderness therapy raise issues under the Mental Health Parity and Addiction Equity Act (MHPAEA), which requires equal treatment in insurance coverage between mental health benefits and medical/surgical benefits. As one

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court aptly stated: “Essentially, the Mental Health Parity and Addiction Equity Act [] requires ERISA plans to treat sicknesses of the mind in the same way that they would a broken bone.”¹ Courts have evolved in their review of wilderness therapy coverage denial cases arising under the MHPAEA, analyzing issues such as the proper, analogous medical/surgical benefit to which wilderness therapy should be compared and under what circumstances has a plan member or the health plan met their respective burdens to establish or rebut an MHPAEA cause of action. The most recent caselaw on these issues is instructive.

WILDERNESS THERAPY

Wilderness therapy is a form of therapy involving immersion in the outdoors or wilderness generally intended to aid patients with behavioral/mental health conditions. Key to wilderness therapy is the removal of patients from their typical environment and exposing them to nature for a continuous period. Wilderness therapy often incorporates wilderness activities, such as hiking, camping, and outdoor-oriented problem solving.

Wilderness therapy has become increasingly prescribed as a form of treatment for various mental health and behavioral conditions. Most often, wilderness therapy is prescribed for minors or young adults. Facilities offering wilderness therapy as a mental health treatment have become more prevalent, particularly in the Western United States.

THE MENTAL HEALTH PARITY AND ADDICTION EQUITY ACT

The MHPAEA, also known as the Parity Act, was enacted “to end discrimination in the provision of insurance coverage for mental health and substance use disorders as compared to coverage for medical and surgical conditions in employer-sponsored group health plans.”² Under the MHPAEA, health plans cannot apply more restrictive treatment limitations to mental health benefits than the health plan applies to medical/surgical benefits.³

The MHPAEA generally does not provide a private right of action to members against their plans, but members may assert claims for equitable relief to seeking a judicial determination that the plan is required to provide greater coverage for mental health services. To state a claim under the MHPAEA, a plaintiff must generally establish:

- (1) A specific treatment restriction on mental health benefits under the plan;

- (2) There is a medical or surgical benefit covered by the plan that is analogous to the mental health benefit sought by the member; and
- (3) The plan imposed greater restrictions on the coverage for the mental health benefit than the medical/surgical benefit.⁴

The second element of this test raises a question discussed at length by courts in the wilderness therapy context: what medical or surgical benefit is analogous to wilderness therapy?

THE SURGICAL ANALOG PROBLEM

The surgical analog problem arises when determining whether a health plan applies mental health/behavioral benefits to the same or a lesser degree to analogous medical/surgical benefits. This requires an analysis into the terms of the health plan and the plan's coverage determinations, including the supporting bases thereof, to analyze whether the plan would treat the analogous medical/surgical treatment in the same way it treats the mental health/behavioral treatment. Because the MHPAEA requires parity between surgical and mental health benefits, it is imperative for health plans and members to understand what surgical and mental health benefits are analogous for parity purposes.

This surgical analog for wilderness therapy had been litigated for several years. Different courts applied various surgical analogs, such as hospice care or rehabilitation facilities generally. Over time, as wilderness therapy became more common and more uniform as a residential health service typically applied to mental and behavioral health conditions, courts have largely settled on skilled nursing facility care as the surgical analog for wilderness therapy. While skilled nursing facilities are not the exclusive surgical analog for wilderness therapy, nearly every court now applies skilled nursing facilities as the relevant surgical analog. Thus, health plans are generally required to offer wilderness therapy coverage to the same extent coverage is afforded to skilled nursing facilities.

FACIAL AND AS-APPLIED CHALLENGES

A plan beneficiary may challenge health plan limitations under the MHPAEA via either a facial or as-applied challenge.⁵ Facial challenges under the MHPAEA focus on the terms of the plan itself and argue that the health plan, by its express terms, offers lesser coverage for mental health treatment than it does surgical/medical treatment. As-applied

challenges focus on the health plan's application of otherwise neutral health plan terms and argue that the plan applied the plan terms in a manner that discriminates between mental health and surgical/medical benefits.

Both challenges require an analysis of the surgical analog problem to demonstrate the health plan, either facially or as-applied, offers coverage for a given mental health condition differently than it would for its surgical analog. Generally, facial challenges are more effective at the motion to dismiss stage because at this stage courts may view the actual plan terms and determine if they are discriminatory on their face. As-applied challenges, on the other hand, are less effective at the dismissal stage because further inquiry is needed to determine the bases for the plan's coverage determinations.

WILDERNESS THERAPY CASELAW

The caselaw surrounding wilderness therapy arises from a health plan's denial of coverage for the service in some form. A health plan may entirely deny coverage for wilderness therapy as a service or the health plan may deny coverage to the degree it is requested by the plan member.

Plan Denials of Wilderness Therapy Entirely as a Service

Health plans may deny a request or claim for wilderness therapy entirely based on the service itself. This is often done either on the basis that the treatment is experimental, investigational, or unproven or based on an explicit wilderness therapy exclusion in the plan.

The U.S. District Court for the District of Utah recently addressed the surgical analog problem in *S.F. v. CIGNA Health & Life Ins. Co.*⁶ The case involved two minor plaintiffs who were beneficiaries of their parents' health plans administered by the defendant health plan. The plaintiffs sought wilderness therapy services to treat substance abuse and mental health conditions. The plan did not directly exclude coverage for wilderness therapy, but the health plan denied coverage on the basis that wilderness therapy was experimental, investigational, or unproven, as defined by the plan. The health plan relied on external clinical coverage policies that opined the efficacy of wilderness therapy as a therapeutic service had not been established in the scientific literature.

The plaintiffs sued the plan, raising claims for ERISA denial of benefits and for violation of the MHPAEA. The health plan moved to dismiss arguing, in relevant part, the plaintiffs had failed to allege facts demonstrating the health plan facially discriminated between mental health and medical/surgical care or that such discrimination existed as the terms of the plan were applied. The district court agreed with the administrator on both arguments.

First, the court found that the administrator's denial of coverage under the experimental, investigational, or unproven exclusion of the plan (supported by the external clinical coverage policies), which purportedly applied equally to wilderness therapy as it would to its surgical analog, skilled nursing facilities, did not discriminate between mental health and medical benefits on the face of the plan.

The court then moved to the as-applied challenge. The plaintiffs argued the administrator's reliance on the external clinical coverage policies was merely a pretext to deny wilderness therapy coverage. The court disagreed, finding the plaintiffs failed to demonstrate why similar clinical coverage policies would not be applicable to surgical/medical benefits.

Accordingly, the court dismissed the plaintiffs' MHPAEA claim.

In *Leo K. And Donna K. v. Anthem Blue Cross Blue Shield, et al.*,⁷ the U.S. District Court for the Eastern District of Wisconsin ruled on a similar case, but reached the opposite result. Like the *S.F. v. CIGNA* case, this matter involved minor plaintiffs and plan beneficiaries who sought wilderness therapy to treat certain mental health conditions. The health plan denied coverage, citing a specific exclusion in the plan excluding coverage for wilderness therapy.

The plaintiffs sued under ERISA for denial of plan benefits and under the MHPAEA. On the defendant's motion to dismiss, the health plan argued the plaintiffs had failed to allege a cause of action under the MHPAEA by failing to allege that surgical/medical conditions were covered by the plan to a greater extent than mental health conditions.

Specifically, the defendant argued that the wilderness therapy exclusion in the plan did not specify that it only excluded wilderness therapy used to treat mental health conditions. According to the defendant, the same exclusion would apply if a member sought wilderness therapy to treat a medical/surgical condition. The plaintiffs countered that wilderness therapy is universally regarded as a treatment for mental health conditions – not medical/surgical conditions – and no similar exclusion existed for the medical/surgical analog to wilderness therapy: skilled nursing facility care. At the dismissal stage, the court agreed with the plaintiffs and held they had adequately alleged an MHPAEA claim based on the plan exclusion.

Plan Denials of Wilderness Therapy to the Degree It Is Requested

Health plans may also deny a request or claim for wilderness therapy to the degree it is requested by the plan member. Typically, such denials dispute the medical necessity of the duration or intensity (often residential or non-residential therapy) of the wilderness therapy requested.

In *S.M. v. United HealthCare Oxford*,⁸ the district court addressed a suit for alleged violations by the defendant-health plan of ERISA and the MHPAEA by denying coverage to the minor plaintiff-plan beneficiary for wilderness therapy to treat the plaintiff's mental health condition.

Specifically, the defendant denied coverage on the basis that the plaintiff sought wilderness therapy at a twenty-four-hour, seven-day per week, residential facility offering wilderness therapy, but the plaintiff's medical documentation allegedly did not support the need for residential, full-time therapy. The defendant relied on external clinical coverage policies to support its determination that plaintiff's medical record supported care at non-residential facility, but not a residential facility. Along these lines, the defendant denied coverage for lack of medical necessity.

The defendant moved for summary judgment, arguing the plaintiff had failed to demonstrate the defendant applied the plan or the external clinical coverage policies to wilderness therapy to a greater extent than it would a medical/surgical benefit, such as skilled nursing facility care.

The court agreed with the defendant, finding the coverage determination appeared equally applicable to medical/surgical benefits, such as care at a skilled nursing facility.

Accordingly, the court granted summary judgment in the defendant's favor.

The most recent wilderness therapy caselaw demonstrates that wilderness therapy is becoming more accepted as a form of mental health treatment. As a result, health plans will face increasing difficulty overcoming facial challenges under the MHPAEA to plan exclusions seeking to limit or eliminate coverage for wilderness therapy explicitly, unless the plan also explicitly excludes coverage for wilderness therapy's medical/surgical analog, skilled nursing facility care. Regarding as-applied challenges, courts scrutinize the bases for entire denials or denials as to the degree requested. This often involves probing whether the health plan relied on clinical coverage policies and the plan's review of the plan beneficiary's medical records to determine whether the plan's denial can reasonably be expected to apply equally

to skilled nursing facility care, the standard medical/surgical analog for wilderness therapy.

CONCLUSION

As more health plan members seek wilderness therapy to treat a wide range of mental health and behavioral conditions, members and plans should remain up to date on wilderness therapy court rulings. Wilderness therapy is evolving in the eyes of courts, like many forms of health treatment, from a questionable, possibly experimental, form of treatment with little efficacy, to a more commonly-accepted tool to address mental health concerns. Awareness of the court trends in this area can aid health plans and members ensure the proper treatment is sought and covered.

NOTES

1. *Gallagher v. Empire HealthChoice Assurance, Inc.*, 339 F.Supp.3d 248 (S.D. NY 2018).
2. *Am. Psychiatric Ass'n v. Anthem Health Plans, Inc.*, 821 F.3d 352, 356 (2d Cir. 2016); 29 U.S.C. § 1185a.
3. 29 U.S.C. § 1185a(a)(3)(A)(ii).
4. *E.W. v. Health Net Life Ins.*, 86 F.4th 1265, 1283 (10th Cir. 2023).
5. *Id.* at 1284.
6. *S.F. v. CIGNA Health & Life Ins. Co.*, 2024 WL 1912359 (D. Utah 2024).
7. *Leo K. And Donna K. v. Anthem Blue Cross Blue Shield, et al.*, 2025 WL 1169054 (E.D. Wis. 2025).
8. *S.M. v. United HealthCare Oxford*, 2024 WL 4028259 (D. Utah 2024).

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