

Health Plan May Not Exclude Specific Autism Treatments

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The extent to which a health plan may exclude coverage for mental health treatment modalities has become an active area in ERISA litigation. In *Doe v. United Behavioral Health*, 2021 U.S. Dist. LEXIS 43146 (N.D. Cal. March 5, 2021), a California federal court held that a plan that covers autism may not exclude specific treatments for the condition.

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, lays the groundwork for this case. The Parity Act requires group health plans to provide the same aggregate benefits for mental healthcare and substance abuse treatment as they do for medical and surgical benefits.

Doe concerned an employer-sponsored and self-funded group health plan governed by ERISA (the Plan). The employer determined the terms of the Plan and, among other things, explicitly covered autism but excluded coverage for “Intensive Behavioral Therapies such as Applied Behavior Analysis for Autism Spectrum Disorders.” A participant later sought reimbursement for Applied Behavior Analysis treatments for his covered son following the son’s autism diagnosis. The Plan’s claims administrator denied coverage based on the exclusion. After exhausting his administrative remedies, the father sued the claims administrator for breach of fiduciary duty under ERISA, arguing that the exclusion violated the Parity Act because it only applied to mental health disorders. The employer then amended the Plan to remove the exclusion, but the court allowed the suit to proceed.

Defendants argued that the exclusion was proper under the Parity Act and its regulations. Specifically, defendants cited 29 U.S.C. § 1185a(b)(1), which states that nothing in the act “shall be construed . . . as requiring a group health plan . . . to provide any mental health or substance use disorder benefits.” The Plan also relied on 29 C.F.R. 2590.712(a), a regulation establishing that a “permanent exclusion of all benefits for a particular condition or disorder . . . is not a treatment limitation for purposes of this definition.”

The court ruled in favor of the father, holding that neither provision justified the exclusion. First, the court held that Section 1185a(b)(1) allows plans not to cover mental health services at all, but if a plan elects to do so, “the Parity Act prohibits imposing treatment limitations applicable only to mental health benefits.” Thus, the court

held, having elected to cover autism, the Plan could not impose a treatment limitation that applied only to that condition. Second, the court held that the “permanent exclusion of all benefits for a particular condition or disorder” language in Section 2590.712(a) means that a plan may exclude coverage for an entire condition (e.g., autism), but not specific treatments within that condition. Accordingly, the court held that the Plan’s exclusion of Applied Behavior Analysis treatments “[o]n its face . . . creates a separate treatment limitation applicable only to services for a mental health condition (Autism). By doing so, the exclusion violates the plain terms of the Parity Act.”

Key Takeaways

The *Doe* case reflects a trend among federal courts to broadly construe the Parity Act with respect to disallowing exclusions of mental health/substance abuse treatments. Employers, claims administrators, and insurers should recognize the risk of a Parity Act challenge when considering whether to deny benefits for specific mental health/substance abuse treatments based on a plan exclusion.

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