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erally accepted standards.

“The complaint alleges how the Anthem criteria fell short of generally accepted standards of care and how the MCG [MCG Health LLC] criteria Anthem is using now are likewise inconsistent with those standards,” Caroline Reynolds, partner at Zuckerman Spaeder LLP, told \textit{MHW}.

Reynolds added, “The overarching goal is to remedy what we alleged in the complaint are systemic practices Anthem Inc. and Anthem UM Services Inc. have adapted.” The insurer’s plan language is very restrictive, she said. The law firm wants the insurer to stop using criteria restrictions and use criteria to help ensure access to care in accordance with the plan and what participants were expecting, she said.

\textbf{ERISA issues}

According to the lawsuit, Anthem and Anthem UM’s use of inferior guidelines contradicts the actual written terms of the plaintiffs’ health plans. It also violates Anthem and Anthem UM’s fiduciary responsibilities under the Employee Retirement Income Security Act of 1974 (ERISA).

According to the complaint, Anthem and Anthem UM adopted and applied criteria that heightened “the relevance of acute behavioral health symptoms while minimizing the relevance of non-acute behavioral health symptoms and conditions—that is, chronic mental health conditions and symptoms that are persistent and/or pervasive and could not necessarily be effectively treated with short-term doses of residential treatment.”

“Zuckerman Spaeder LLP’s behavioral health care practice focuses on using the powerful protections provided under ERISA and the Mental Health Parity and Addiction Equity Act (MHPAEA) to help ensure patients have access to the full scope of coverage available under their health care plans,” said Reynolds.

Last year, in a landmark lawsuit, \textit{Wit v. UBH}, the court determined that UBH violated its ERISA obligations in denying coverage (see \textit{MHW}, March 9, 2019; August 25, 2019). The class-action lawsuit was filed on behalf of a nationwide class of patients who were denied coverage to gain access to outpatient, intensive outpatient and residential treatment for mental health and substance use disorders.

Zuckerman Spaeder’s health care practice is very active in the behavioral health space, said Reynolds. “The firm has a number of cases pending that seek to clarify and enforce our client’s rights under ERISA to the behavioral health coverage their plans provide,” she said.

Pending cases include \textit{Tomlinson v. United Behavioral Health} (N.D., Calif.) which challenge restrictive proprietary coverage guidelines; and \textit{Smith V. United Healthcare Insurance Co. and UBH} (N.D., Calif.) involving parity challenges to discriminatory reimbursement rates.

\textbf{Challenging guidelines}

“In cases in which we represent insureds who are challenging medical necessity guidelines, the allegations have generally focused on the administrator’s breaches of fiduciary duty and failure to comply with the plans’ terms,” said Reynolds.

“We enumerated a number of ways in which Anthem deviated from what’s normally accepted,” said Reynolds. The insurer’s criteria include acute, short-term factors that reduced the ability for patients to be able to get coverage for their treatment, she said.

Reynolds said she thinks the case will be in litigation for quite a while. “Class-action lawsuits take a long time,” she said. “They’re tough cases; that’s why it’s important to do it as a class action. We’re committed to moving it forward and trying to get a good resolution for the plaintiffs.”

Reynolds expects similar cases moving forward. “Unfortunately, this kind of conduct and restrictive criteria are very common throughout the industry,” she said. “We want to help our clients obtain that type of coverage they’re entitled to under their employers’ covered plan.”

\textbf{Psychiatrists, patients favor telemedicine; challenges exist}

Despite some drawbacks, the transition to telemedicine in the early weeks of the COVID-19 pandemic went more smoothly than expected, according to a majority of outpatient psychiatrists interviewed in a qualitative analysis published online in \textit{Psychiatric Services}. Patients, they said, have also expressed satisfaction with virtual care.

The National Institutes of Health-sponsored study, ‘Suddenly Becoming a Virtual Doctor: Experiences of Psychiatrists Transitioning to Telemedicine During the COVID-19 Pandemic,’ was conducted by RAND and Harvard researchers. The aim is to inform the ongoing COVID-19 response and pass on lessons to psychiatrists who are starting to offer telemedicine.
“This is the first study on psychiatrists’ experiences with telemedicine in multiple states,” Lori Uscher-Pines, senior policy researcher at RAND, told MHW. In general, the rapid transition to telemedicine went well for most of the psychiatrists in the study, she said. According to the psychiatrists, the patients responded favorably as well and appreciated the convenience of telemedicine. Initially, patients felt they were not going to receive needed care during this crisis, she said.

Researchers noted that relatively few psychiatrists were using telemedicine due to regulatory and reimbursement barriers, lack of training and resistance to practice change. Fewer than one-half of community-based behavioral health organizations offered telemedicine in 2018, and only 5% of psychiatrists who provided care in the Medicare program had provided at least one telemedicine visit.

“We recruited psychiatrists who indicated that less than 10% of their visits were via telemedicine prior to March 2020,” Uscher-Pines said.

Method
From March 31 through April 9, researchers conducted a qualitative study featuring 20 semistructured interviews with outpatient psychiatrists practicing in states with significant early COVID-19 activity: New York, New Jersey, California, Louisiana and Washington state.

Inclusion criteria noted that less than 10% of the psychiatrists used telemedicine prior to the pandemic. Less than half spent more than 50% of working hours in outpatient settings (e.g., community mental health centers, federally qualified health centers or hospitals with outpatient clinics).

Results
At the time of the interviews, all psychiatrists in the sample had been delivering services for two to four weeks, including video visits, phone visits or some combination of the two. Most of the psychiatrists had transitioned to fully virtual practices.

One psychiatrist from a nonprofit clinic in New York said, “Patients have been very happy that they’ve been able to get seen or treated in any manner, shape, or form and ... not have to go into a doctor’s office.”

Psychiatrists in private practice expressed more concern about the impact of telemedicine on revenue and sustainability as a delivery model, most likely because they play a more direct role in billing than do psychiatrists in other settings, the study stated.

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Psychiatrists in the sample experienced a strong preference to return to in-person care after the pandemic, according to the study. Reasons included the ritual of going to an office, the fact that the office is a private and safe space and, for some, the perceived inferior quality of physician-patient interactions via telemedicine.

Positive, negative impacts
Two of the positive impacts of telemedicine on psychiatrist-patient interaction were the benefits of seeing the home environment and greater ease and access for some patients.

About one-third of psychiatrists were doing a majority of phone visits, which was especially common among providers serving underserved populations, said Uscher-Pines.

Negative impacts included: (1) reduced ability to observe nonverbal cues to support diagnosis and treatment, (2) less patient privacy, (3) challenges with hearing patients clearly by phone or audio, (4) more distractions for patients in home environment, (5) inability to do a physical exam and take vitals, (6) difficulty in assessing extrapyramidal symptoms from antipsychotics, (7) shorter visits and (8) challenges in managing the time within the visit.

Uscher-Pines noted that for patients who wanted a little more privacy in the home setting during a telemedicine visit, they usually went inside their car, took a walk or took the call inside of a closet. “They were getting creative to achieve privacy during the visit,” she said.

“We heard there were distractions in the home setting,” added Uscher-Pines. Some patients were multitasking or caring for children and it was difficult for them to maintain focus, she said.

Psychiatrists noted that phone calls were shorter than the videos. While many favored video, they realized patients sometimes had no device or internet or were not computer-literate enough to navigate a video visit, she said.

Uscher-Pines said it is important to track these telemedicine visits over time in the months to come. “In the future, it will be important to explore the patient’s perspective on this,” she said.

Having telemedicine as an option is important in serving disadvantaged populations, said Uscher-Pines. “Right now, payers are reimbursing for telemedicine services,” she said. “There was very little reimbursement for phone visits prior to COVID-19. The key policy question is will that continued to be allowed [after the pandemic]?”