



Game Changer: Implications of the *Wit v. United* *Behavioral Health* Ruling

Moderated by David Lloyd, Senior Policy Advisor, The Kennedy Forum

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Panelist: Former U.S. Rep. Patrick J. Kennedy

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- Lead author of the Mental Health Parity and Addiction Equity Act (Federal Parity Law).
- Founder of The Kennedy Forum, a nonprofit that unites advocates, business leaders, and government agencies to advance evidence-based practices, policies, and programming in mental health and addiction.
- Author of New York Times Bestseller, “A Common Struggle: A Personal Journey Through the Past and Future of Mental Illness and Addiction,” which details a bold plan for the future of mental health care in America.
- Former member of the President’s Commission on Combating Drug Addiction and the Opioid Crisis.
- Co-chair of the Action Alliance’s Mental Health & Suicide Prevention National Response to COVID-19.



Panelist: D. Brian Hufford

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- Partner at Zuckerman Spaeder LLP.
- Efforts resulted in two of the largest recoveries ever obtained in ERISA-based insurance class actions, including a \$350 million settlement with UnitedHealthcare arising from its use of the Ingenix database to set reimbursement rates for out-of-network services.
- Led the team that achieved the landmark decision in *Wit v. UnitedHealthcare*
- Law360 "MVP" for Health Care (2015, 2016, and 2017) and Benefits (2019).
- Named Plaintiff's Attorney "Trailblazer" in 2017 by The National Law Journal.
- Under his leadership, Zuckerman Spaeder LLP health care practice was named 2017 Health Group of the Year and Benefits Group of the Year in 2018 and 2019 by Law360.

Panelist: Joe Parks, MD

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- Medical Director and Vice President, Practice Improvement & Consulting, for The National Council for Behavioral Health.
- Distinguished Research Professor of Science at Missouri Institute of Mental Health with the University of Missouri, St. Louis.
- National behavioral health representative at large for The Joint Commission.
- Practices outpatient psychiatry at Family Health Center, a federally funded community health center.
- Previously served as the Director of Missouri MO HealthNet Division (Missouri Medicaid) in the Missouri Department of Social Services.
- Was Medical Director for the Missouri Department of Mental Health in Jefferson City and the Division Director for the Division of Comprehensive Psychiatric Services.

Generally Accepted Standards of Care

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The Wit Court Identified 8 Standards for Behavioral Health Care:

1. Treat underlying condition, not only current symptoms.
2. Treat co-occurring conditions.
3. Treat at the least intensive level of care that is safe and just as effective as higher level of care (cannot sacrifice effectiveness because a treatment is equally safe).
4. Err on the side of caution by using a higher level of care when there is ambiguity.
5. Include treatment services to maintain function.
6. Determine duration based on the individual's needs, without arbitrary limits.
7. Address unique needs of children/adolescents into account.
8. Use a multidimensional assessment to determine level of care (e.g., LOCUS, ASAM criteria).

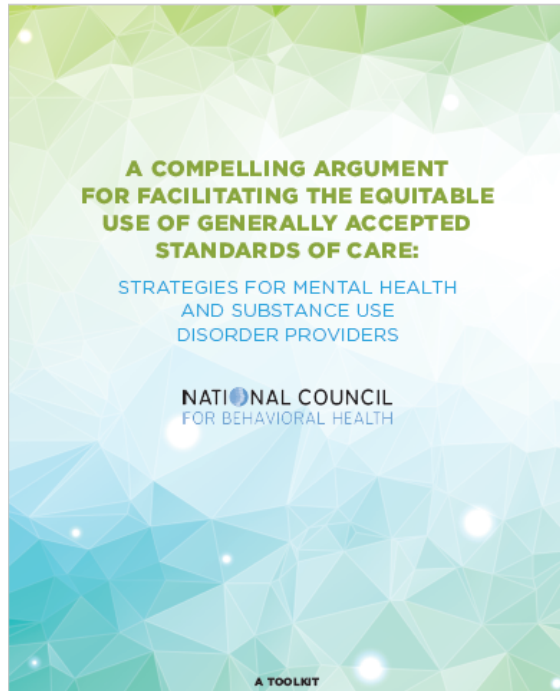
Recent Parity Enforcement Actions

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- **Delaware, Nov. 2020 (\$597,000):** Highmark and Aetna
- **Illinois, July 2020 (\$2 million):** CIGNA Healthcare of IL, United Healthcare, CIGNA Health and Life, BCBS IL, and Celtic
- **Massachusetts, Feb. 2020 (\$1 million):** AG Settlements with Harvard Pilgrim Health Care and United Behavioral Health; Fallon Community Health Plan and Beacon Health Strategies; All Ways Health Partners; Blue Cross Blue Shield of Massachusetts; and Tufts Health Plan
- **Pennsylvania, Nov. 2019 (\$1.8 million):** United Healthcare
- **Pennsylvania, Jan. 2019 (\$190,000):** Aetna fined for violating laws relating to substance use disorder and autism coverage
- **Rhode Island, Sept. 2018 (\$5 million):** AG settlement with BCBS RI
- **New York State, 2014-17 (\$3 million):** AG settlements with MVP, EmblemHealth, Excellus, Beacon Health Options, Cigna, HealthNow, and Anthem

Upholding Generally Accepted Standards of Care

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Toolkit from the National Council for Behavioral Health

Who should use it?

MH/SUD organizations, particularly administrators, clinicians and staff who process claim denial appeals and prior authorizations.

How should the toolkit be used?

Use the recommended strategies and resources within the toolkit to ensure patients are receiving access to medically necessary services as determined by appropriately applying generally accepted standards of care.

Toolkit Overview: What is in it?

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- Overview of the Wit Decision
- Compelling argument for upholding generally accepted standards of care
 - Appeal of Denial letter templates
 - Scripts for phone calls with MCO staff
- Practical guidance for developing a data-driven and Wit Decision-informed authorization and appeal strategy for your organization

Does not contain legal advice



Accessing the Toolkit

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Visit www.thenationalcouncil.org/standards-of-care/ to download a copy of the toolkit and other resources:

- The Sources of Generally Accepted Standards of Care
- Law & Psychiatry article “Holding Insurers Accountable for Parity in Coverage of Mental Health Treatment” Nov 2019
- Position Statement on Generally Accepted Standards of Care for Behavioral Health

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