

Courtney Bergan
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Baltimore, MD 21212
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House Health and Government Operations Committee, HB 455

February 20, 2020

Support

My name is Courtney Bergan. I am a graduate student at the University of Maryland School of Social Work. I also have a professional background in neuroscience research, having co-authored several publications on neuropsychiatric disorders.

I support house bill 455, implementing reporting standards for parity compliance and enforcement. I struggle with severe mental illness and obtaining appropriate care for my condition has required a disproportionate investment of time and energy when I compare it to my experiences seeking medical care. When seeking medical care, I don't have to think twice about basing my provider selection on network affiliation; I can simply choose the best specialist for my condition. Yet, I have repeatedly made significant sacrifices to obtain insurance coverage that is most likely to cover appropriate psychiatric care. Not only that, there are significant differences in how I see carriers reimbursing medical and psychiatric providers for the exact same services, with insurers allowing for greater reimbursement to medical providers. These disparate standards for the coverage of medical versus psychiatric care have had a significant impact on my health and my ability to participate in my community.

Due to the complexities involved in treating my psychiatric condition, few providers are both able and willing to assume my care. There are even fewer who take insurance due to reimbursement rates that are not commensurate with the complexity of the care required to treat my condition. Paying for out-of-network psychiatric care is not an option for me, as the cost of doing so is well beyond my means. If I were to rely on my out-of-network benefits to access mental health care, psychotherapy alone would cost more than 50% of my income. Last year I spent more than 4 months contacting over 60 providers of varying credentials, desperately trying to locate an in-network provider who had the availability and expertise to assume my care. When I contacted my insurer for assistance, they admitted to exhausting their list of in-network mental health providers, and they ultimately suggested I seek care with an out-of-network provider.

Due to my inability to access in-network mental health care, I began seeing a non-network specialist who agreed to request a single case agreement with my carrier. The request for a single case agreement was initially denied within hours of my provider's request, with my carrier citing that I was not eligible for a single case agreement, even though my plan documents indicated that I was. I testified on a similar bill before the senate finance committee last year, and the following day I finally received approval for the single case agreement that had been requested nearly two months earlier. Had I not received approval for that single case agreement, I am not sure I would still be here, testifying before you today.

While I was relieved to receive approval of the single case agreement with my psychologist, my relief was short-lived. Last June I was notified that the University of Maryland Baltimore's student health insurance plan would be changing carriers, leaving me without access to any of my outpatient providers under the new plan. As a result, I spent more than 4 months in the hospital, since I couldn't even find a psychiatrist who would prescribe my medications. This had significant personal repercussions for me, as I will now be delayed in completing my graduate degree by a year, but it also posed unnecessary costs to Maryland taxpayers. Maryland Medical Assistance is my secondary insurer, and they ended up paying for the portion of my inpatient care that wasn't covered by my primary insurer.

Furthermore, I have also struggled to obtain coverage for my psychiatric medications, some of which are common, low cost, generic medications. Due to my inability to obtain timely approval from my insurer for one of these medications, I ran out and I had a seizure as a result of the sudden withdrawal.

My experience demonstrates that discriminatory standards are still being applied to the coverage of behavioral health conditions when compared to those applied to the coverage of other medical conditions, despite state and federal Parity laws barring such discrimination. I should not be prohibited from participating in my education or community because insurers refuse to cover adequate behavioral health care, nor should I have to invest more of my time or money in seeking mental health services than I do in seeking other medical care. Yet currently that is the case because, without parity compliance and enforcement, I am left with no other option.

I support house bill 455 so that health insurance carriers are required to demonstrate compliance with existing Parity laws, and they are held accountable for the unlawful discrimination committed towards those seeking care for mental health and substance use disorders. The lives of too many Marylanders hang in the balance, for us to continue ignoring insurers' discriminatory coverage of behavioral health services.

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Encl: Correspondence with the MIA regarding Parity Compliance & Plan Approval Process

Courtney Bergan
6166 Parkway Drive, Apt 2
Baltimore, MD 21212
Phone: (603) 770-5374

June 21, 2019

Maryland Insurance Administration
Attn: Consumer Complaint Investigation Life & Health
200 St. Paul Place, Suite 2700
Baltimore, MD 21202
Phone: 410-468-2000
Fax: 410-468-2270

Re: Request to deny approval of proposed 2019-2020 United Healthcare Student Resources Plan at University of Maryland Baltimore

To Whom it May Concern:

The University of Maryland Baltimore has proposed a change in its student health insurance plan to United Healthcare Student Resources, effective August 1st, 2019. The proposed plan is currently under review for approval by the Maryland Insurance Administration. I urge you to deny approval of this plan, pursuant to evidence that a contract between the University of Maryland Baltimore and United Healthcare would violate state contracting law, MD CODE, STATE FIN & PROC § 19-101, that provides as follows:

“(a) It is the policy of the State not to enter into a contract with any business entity that has discriminated in the solicitation, selection, hiring, or commercial treatment of vendors, suppliers, subcontractors, or commercial customers on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor's, supplier's, or commercial customer's employees or owners.

(b) Nothing in this title shall be construed to prohibit or limit otherwise lawful efforts to remedy the effects of discrimination that have occurred or are occurring in the marketplace.

(c) A complaint of discrimination shall be filed within 4 years after the date the cause of action accrues.”

The recent *Wit vs. United Behavioral Health* decision handed down by Chief Magistrate Judge Joseph C. Spero of the U.S. District Court for the Northern District of California, on March 5, 2019, ruled that United Healthcare did not comply with generally accepted medical

criteria for approval of mental health and substance use disorder treatment. United Healthcare was found to be using unreasonable and overly restrictive guidelines which led to the inappropriate denial of coverage for thousands of patients. The findings in the *Wit vs. United Behavioral Health* Decision provide firm evidence that United Healthcare discriminated against thousands of its beneficiaries disabled by mental health and substance use disorders.

Furthermore, United Healthcare violates COMAR §31.10.44.05 related to network adequacy wait time standards. This is particularly apparent for behavioral health services, where United Healthcare only met the wait time standards 72% of the time. For urgent care, United Healthcare documented meeting the wait time standard only 63% of the time, however, this declines to 55% when urgent care facilities are removed from the data.

In concert, there is compelling evidence that United Healthcare has, and continues to, discriminate against those disabled by mental health and substance use disorders.

I, myself, have a disability, and I fear the repercussions this change in insurance carriers will have on my own, and other disabled students' access to healthcare. I will lose access to behavioral health services covered under the school's present insurer. Prior to having access to these specialized services, I spent almost 8 months in the hospital in 2018 alone. Interruption in that care would prevent me from being able to return to school in the fall and the United Behavioral Health network does not offer a provider with the appropriate training and experience to treat my condition. Furthermore, I was recently informed that United Healthcare is unlikely to cover the home care services I receive for my home infusion therapy. I require these services to be able to function in the classroom and in the world.

In addition, one of my fellow students is an amputee. Her prosthetic supplier who she moved here to access, is not covered under the proposed United Healthcare plan, potentially stealing her ability to walk independently. Other students have also reached out to me with concerns about losing access to their current behavioral health services, raising concerns about medication and provider access.

When concerns about provider access were raised with the University administration and Gallagher Student Health, students were informed that going out-of-network on the proposed United Healthcare Student Resources plan would be cheaper than accessing in-network services on our current CareFirst plan. While it is true that the out-of-network deductible and out-of-pocket maximum are lower on the proposed United Healthcare plan, as you are likely aware, out-of-network services are subject to balance billing. Due to insurers' undisclosed reimbursement rates, the out-of-pocket costs associated with such services remain unknown until they are billed. Not only that, any balance bill does not go towards *any* out-of-pocket maximum. Therefore, it is highly unlikely that receiving out-of-network care on the new student health plan, could be cheaper than receiving in-network care with CareFirst. Despite pointing this out to the UMB administration and Gallagher Student Health, this information has continued to be communicated to students.

If the United Healthcare Student Resources Plan is approved, it will have a disparate impact on students with disabilities. Please consider United Healthcare's multiple statutory violations and deny approval of this plan for students attending the University of Maryland Baltimore, so that all students, including those impacted by disability can continue to access necessary health care services. Access to healthcare is the linchpin in our ability to access our education.

Sincerely,

A handwritten signature in black ink, appearing to read 'Courtney Bergan', followed by a long horizontal line extending to the right.

Courtney Bergan
Master in Social Work Candidate 2021
University of Maryland Baltimore
cbergan@umaryland.edu

Encl:

MD Code, State Finance and Procurement, § 19-101 obtained from Westlaw

AMA Issue Brief-Wit Decision

Network Adequacy Report for United Choice Network

Gallagher Student Health Summary of Changes to Student Health Insurance Plan

Email notification from UMB re change in student health insurance plan

Emails from Gallagher Student Health re student health insurance plan (2)

Email correspondence with UMB administration re concerns pertaining to information provided about student health insurance change

From: David Cooney -MDInsurance- <david.cooney@maryland.gov>

Sent: Tuesday, June 25, 2019 10:57:25 AM

To: Bergan, Courtney

Cc: Mehgan Sidhu; Savage, Katie

Subject: Re: Concerns r/t Pending Approval of United Healthcare Student Plan at U. Maryland Baltimore

Dear Ms. Bergan,

Thank you for your letter addressing your concerns with the University of Maryland Baltimore's proposed change to its student health insurance plan. I oversee the unit in the Maryland Insurance Administration (MIA) that reviews and approves the health insurance policies of insurance carriers before the carriers are permitted to sell their products in Maryland. I understand your concerns and sympathize with your situation, but unfortunately the MIA has no authority to address the particular concerns outlined in your letter, except as I otherwise explain below.

The MIA reviews and approves the policy forms and rates associated with student health plans that are intended to be sold in Maryland. However, the MIA has no jurisdiction over a specific group policyholder's decision to choose coverage with a particular insurance carrier. Under a group health insurance policy such as a student health plan, the policyholder (e.g. the university) has the right to select or change insurance carriers at any time without the consent of individual covered persons (e.g. students). In your situation, you may wish to discuss your concerns with the appropriate department of the University of Maryland Baltimore. Based on the supporting documents you included with your letter, it appears you have already attempted to do this.

Regarding the Unitedhealthcare Insurance Company student health plan in particular, please note that the policy forms for this product were filed with the MIA last year for the 2018-2019 school year, and were approved by the MIA on May 31, 2018. Unitedhealthcare did not make any changes to the approved forms for the 2019-2020 school year, so a new form filing was not required this year. Unitedhealthcare, did, however, revise the premium rates for the 2019-2020 school year, so a new rate filing was submitted to the MIA this year. The revised rates were recently approved on June 18, 2019.

I want to assure you that every health insurance product filed for approval with the MIA is reviewed for compliance with all applicable state and federal laws and regulations. This includes the federal Mental Health Parity and Addiction Equity Act and corresponding state mental health parity requirements. Accordingly, the Unitedhealthcare Insurance Company student health plan was subject to a rigorous review process before it was approved.

You are correct to note that the network adequacy standards in COMAR 31.10.44 are applicable to the Unitedhealthcare Insurance Company student health plan. However, state law does not require the provider network for a health benefit plan to be approved prior to selling the plan in Maryland. The next annual network access plan filing is due from carriers on July 1, and the MIA will be reviewing the plans very closely with a particular focus on access to mental health and substance use disorder services. Carriers will be expected to comply with all applicable standards or obtain an approved waiver of any standard that could not reasonably be met.

Finally, please note that the MIA is well aware of the Wit et al. v. United Behavioral Health U.S. District Court case, and will consider whether the court's findings should inform any future market conduct investigations or examinations. However, the court's decision is not by itself indicative of whether that UnitedHealthcare's student health plan in Maryland has violated any state or federal laws.

In conclusion, the Unitedhealthcare student health plan has already been approved by the MIA for sale in Maryland, but this approval was not granted until the MIA determined that the plan complied with all applicable laws and regulations.

Sincerely,

David Cooney, FLMI, AIRC
Chief, Health Insurance and Managed Care
Maryland Insurance Administration
410-468-2215
800-492-6116, Ext. 2215
410-468-2204 (fax)

Subject: Re: Concerns r/t Pending Approval of United Healthcare Student Plan at U. Maryland Baltimore

Date: June 27, 2019 at 4:21:58 PM EDT

To: David Cooney -MDInsurance- <david.cooney@maryland.gov>

Cc: darcim.smith@maryland.gov, nancy.grodin@maryland.gov, al.redmer@maryland.gov, Mehgan Sidhu <mehgansidhu@gmail.com>, "Savage, Katie" <ksavage@umaryland.edu>

Dear Mr. Cooney:

I appreciate you taking the time to consider my concerns related to the approval of the United Healthcare Student Resources plan for students at the University of Maryland, Baltimore.

I did just want to respond, as I testified on Senate Bill 631 in the 2019 legislative session that was intended to implement mandatory parity compliance reporting. The bill that was passed ultimately made the ASAM criteria mandatory for medical necessity determinations for substance use disorder services. However, due to persistent evidence of parity violations across carriers, I am continuing to work with interested parties to improve parity compliance and enforcement in Maryland.

As part of research I did this past semester at the University of Maryland and policy work I am involved in, I have become acutely aware that form review does not involve a complete review for Parity Act violations, since carriers are NOT required to provide information related to non-quantitative treatment limitations as part of the plan review and approval process in the state of Maryland. Therefore, the MIA cannot fully determine whether plans are compliant with the Mental Health Parity and Addiction Equity Act.

Despite the lack of information provided as part of the plan review process, I cited the *Wit et al vs. United Behavioral Health* decision, as it provides compelling evidence that United Healthcare, as an entity, has been using faulty medical necessity criteria to make coverage determinations for behavioral health services, and that such guidelines were not consistent with generally accepted medical necessity criteria for approval of such services. The ruling determines these overly restrictive guidelines were developed in an attempt to mitigate the financial impact of the 2008 Parity Act. This is clearly stated on page 93 of Judge Spero's ruling on the Wit decision. This is just one very clear example of a non-quantitative treatment limitation that is not included as part of plan review, but has a significant impact on plan beneficiaries.

Furthermore, United Healthcare plans administered in Maryland are part of the greater UnitedHealthcare Group, and therefore, such findings cannot be divorced from the carrier's practices in the state of Maryland. In fact, Maryland families have spoken out on the impact of United Behavioral Health's use of overly restrictive guidelines to determine coverage for behavioral health services. Maryland residents are amongst those impacted by United Behavioral Health's faulty coverage determinations, reporting restricted access to potentially life-saving healthcare services.

In addition, the MIA fails to assess other non-quantitative treatment limitations, such as equity in provider reimbursement, service restrictions, and treatment protocols. In conclusion, the plan review process fails to fully assess whether plans are indeed compliant with the 2008 Mental Health Parity and Addiction Equity Act.

Network Adequacy is one way policy makers have attempted to quantify a non-quantitative treatment limitation, by trying to ensure adequate access to provider networks for all services. While I understand inadequate provider networks are not, in and of themselves, a reason to deny plan approval. When there is a significant discrepancy in compliance with the network adequacy wait-time standards between physical and behavioral health services, this raises questions around parity compliance, based on disparate access to behavioral health services. The United Healthcare Choice network adequacy report indicates that there is a discrepancy in behavioral health access for more than 10% of United Healthcare beneficiaries in Maryland, raising red flags around the plan's compliance with the MHPAEA and warranting further investigation.

While I appreciate that you will take the *Wit et al vs. United Behavioral Health* decision into consideration, as to whether it should inform future market conduct surveys. This does not help to ensure the current plan being offered by United Healthcare Student Resources is compliant with the MHPAEA or determine whether United Healthcare is currently using discriminatory coverage guidelines. However, it does document discriminatory practices towards plan beneficiaries disabled by mental health and substance use disorders, therefore, again raising the issue that a contract between the University of Maryland, Baltimore and United Healthcare Student Resources would violate MD Code, State Finance and Procurement § 19-101, which is intended to prevent state entities from contracting with businesses that have records of discrimination.

I understand that the plan has already been approved, however, the plan has not yet gone into effect for students at the University of Maryland, Baltimore, so there is still time to prevent the violation of the state finance and procurement provision, that is specific to the plan's implementation at a state institution. I hope the MIA will consider this information and halt implementation of this plan.

Sincerely,

Courtney Bergan