California Mental Health Parity Law: Health Plans Must Cover All Medically Necessary Treatment for Severe Mental Health Disabilities, but Denials Persist

December 2018, Publication #CM50.01

The *Rea* Decision Mandating Medically Necessary Care

In a victory for mental health parity, the California Court of Appeals ruled in *Rea v. Blue Shield of California*,¹ that an insurance company could not deny coverage for residential treatment for eating disorders, "even where the health plan does not provide coverage” for such treatment."² The decision was based on the California Mental Health Parity Act (Parity Act), which requires that "every health service plan contract 'provide coverage for the diagnosis and medically necessary treatment of severe mental illnesses … under the same terms and conditions applied to other medical conditions.'”³

³ *Id.* at 1214.
⁴ The *Rea* decision followed a similar decision by the Federal Ninth Circuit in *Harlick v. Blue Shield of California*. The Court in *Harlick* held that, "plans within the scope of the [Parity] Act must provide coverage of all 'medically necessary treatment' for 'severe mental illnesses’ under the same financial terms as those applied to physical illnesses." *Harlick v. Blue Shield of California*, 686 F.3d 699, 711 (9th Cir. 2012).
Marissa Rea, the plaintiff, was diagnosed with Anorexia Nervosa. Outpatient treatment had been unsuccessful, and her doctor advised that residential treatment was medically necessary. Ms. Rea’s health care services plan, Blue Shield of California, denied the claim, stating that, while the Parity Act did require equal coverage for both medical and mental health coverage, there was nothing in the statutory language that showed an intent to cover all treatments simply because the treatment was medically necessary. The trial court ruled for Blue Shield and dismissed Ms. Rea’s lawsuit.

The Court of Appeals disagreed, finding that parity does not require identical matching of services between physical health services and mental health care. Instead, the Parity Act “requires treatment of mental illnesses sufficient to reach the same quality of care afforded physical illnesses.”

Disability Rights California (DRC) and other public interest groups filed a “friend of the court” brief in the Rea case. In this brief, DRC argued it was good public policy to require insurance plans to cover the most effective treatment for conditions such as autism or schizophrenia, even if there is not precise analog in the medical area. For example, DRC’s brief pointed to the extensive evidence that assertive community treatment (known as ACT) is more effective and less costly that inpatient hospitalization or traditional office-based outpatient therapy. The Court of Appeals agreed about the policy consequences, stating that Blue Shield’s denial of coverage “would exclude one of the most effective treatments for [the plaintiffs’ condition],” and thwart one of the primary purposes of the Parity Act. “Victims of eating disorders will not receive effective treatment, resulting in needless suffering and physical deterioration … the loss of productivity and increased physical illness.”

This definition of parity in the Rea decision applies not only for health care services plans like HMOs, but for insurance plans such as PPOs and EPOs. In Burton v. Blue Shield of California Life & Health Insurance Co., the plaintiff was diagnosed with anxiety, major depressive disorder, and panic disorder among other illnesses. Her doctor recommended a residential treatment facility in Tucson, Arizona to treat several disorders including major depressive disorder. Her health insurance, a PPO, denied the prior authorization request, stating treatment was not required by the Parity Act because of the type of treatment. The federal court in Los Angeles ruled against the health plan, and found that the

---

5 Id. at 1238.
6 Id. at 1236.
7 Id. at 1236-37.
medically necessary residential treatment was required by the Parity Act. This is good news for people whose health care services plan falls under the Parity Act. The Parity Act requires equal insurance coverage for people with severe mental health disabilities and for children with severe emotional disturbances. Treatments that are most effective for mental health care are covered even without an identical service available in medical/surgical care. These treatments include the use of a team approach, low caseloads, home visits, and a comprehensive approach to the person’s daily needs.

**After Rea: The Fight Over “Medical Necessity”**

Though *Harlick* and *Rea* mandated “medically necessary” treatment for severe mental health disabilities, what constitutes “medically necessary” care in any given instance remains an open—and often contentious—question. Medical necessity decisions are not solely within the purview of the treating professional; rather, insurance companies are permitted to create and apply their own medical necessity standards. Legal guidance regarding medical necessity standards is minimal. As a result, each insurance company maintains its own restrictive medical necessity criteria for each treatment or service. While patients and their doctors can request medical necessity information from insurers, the processes, strategies, evidentiary standards, and other factors used to apply medical necessity standards often remain opaque.

The lack of uniformity in medical necessity standards across treatments and insurers, coupled with non-public decision-making processes, allows for erroneous medical necessity determinations, especially for chronic mental illness. An investigative report found that there has been an increase in the use of “aggressive internal evaluations to determine whether often expensive and long-term mental health treatment is medically necessary.” As a result, people needing costly or on-going mental health care must engage in lengthy appeals processes within their insurance companies and California’s insurance oversight agencies. These avenues for appeal are especially difficult for people living with the some of the conditions most frequently associated with denials, such as severe depression or eating disorders.

---

9 Sarchett v. Blue Shield of Cal., 43 Cal. 3d 1, 233 Cal. Rptr. 76 (1987).
10 See, e.g., Cal. Health & Saf. Code, §§ 1363.5(b),1367.01(b).
For those who do engage in the process of appealing insurance denials, the numbers show many are overturned. The Department of Managed Health Care (DMHC) overturned nearly fifty percent of independent medical reviews it conducted of mental health coverage denials based on medical necessity.\(^\text{12}\) In the case of some specific disorders, such as eating disorders, the DMHC overturned fifty-six percent of the medical necessity denials it reviewed.\(^\text{13}\) The California Department of Insurance (CDI), which also conducts independent medical reviews, has overturned fifty-three percent of mental health coverage denials based on medical necessity.\(^\text{14}\)

The high percentage of insurer decisions subsequently overturned by the DMHC or the CDI should encourage challenges to “not medically necessary” denials. The likelihood of success makes it worth the effort in many cases, considering that the result may be lifesaving care, or freedom from medical debt. In recent years, California State Senator Jim Beall secured budget funds for the DMHC and CDI to hire additional staff, specifically for parity enforcement.\(^\text{15}\) Moreover, there have been numerous lawsuits challenging how insurers define medical necessity, attempting to bring these definitions more in line with generally accepted professional standards in the mental health and substance abuse disorder treatment communities.\(^\text{16}\) With continued appeals, enforcement, and legal challenges, the promise of \textit{Rea}—that people with severe mental health disabilities will get all the care they need—may yet be realized.

This information is provided to you through the combined effort of the following organizations:

\begin{itemize}
  \item Disability Rights California (916) 504-5800/(800) 776-5746
  \item Legal Aid Society of San Diego, Inc. (877) 534-2524
  \item Mental Health Advocacy Project (408) 293-4790
  \item Mental Health Advocacy Services, Inc. (213) 389-2077
\end{itemize}

\(^{12}\) \textit{Id.}  
\(^{13}\) \textit{Id.}  
\(^{14}\) \textit{Id.}  
\(^{15}\) \textit{Id.}  
We want to hear from you! After reading this fact sheet, please take this short survey and give us your feedback.

English version: [http://goo.gl/forms/eiqqQ1GRfd](http://goo.gl/forms/eiqqQ1GRfd)

Disability Rights California is funded by a variety of sources, for a complete list of funders, go to [https://www.disabilityrightsca.org/pod/list-of-funding-grants-and-contracts](https://www.disabilityrightsca.org/pod/list-of-funding-grants-and-contracts).

The California Mental Health Services Authority (CalMHSA) is an organization of county governments working to improve mental health outcomes for individuals, families and communities. Prevention and Early Intervention programs implemented by CalMHSA are funded by counties through the voter-approved Mental Health Services Act (Prop 63). Prop. 63 provides the funding and framework needed to expand mental health services to previously underserved populations and all of California’s diverse communities.