

Q: Can a psychiatrist who is serving as a managed care or insurance utilization reviewer (who does not have a direct relationship with the patient) ethically limit access to care in ways known to be in violation of parity? Here it is assumed the issue is not medical necessity, but whether the insurance company or managed-care company chooses to cover the benefit in question. (Examples: a reviewer refuses to authorize residential treatment because it is not a covered benefit--and a court has hypothetically determined that it is inconsistent with the parity law to exclude residential benefits, or a reviewer refuses to support treatment for a personality disorder, despite these being major disorders that carry a significant risk of suicide, complicate the treatment of other comorbid disorders, have a practice guideline, and several recognized evidence based treatments. Please note these examples are offered for clarity, but are not the only instances about which I am inquiring.)

A: In our opinion, the questions posed can be distilled into one; does the psychiatrist working as a managed care or utilization reviewer owe primary obligation to the patient or to the plan? To be clear, in this situation, the psychiatrist is a non-treating psychiatrist. The Opinions of the APA ethics code are best interpreted as meaning that for a treating psychiatrist in a managed care setting, patient welfare is primary. Similarly, for forensic psychiatrists in most contexts, patient care is not primary, and their primary duties instead are to promote justice and answer questions honestly.

A managed care or utilization reviewer is not a treating psychiatrist. Managed care is designed to cut costs, reduce premiums, and possibly increase profits. The reviewer is hired by the company to assess whether the care meets the criteria the plan has established. The reviewer cannot authorize benefits that are not covered by the plan. The patient who purchased the insurance should have been supplied the coverage by the plan. In our opinion, the psychiatrist managed care or utilization reviewer owes his primary obligation to the managed care company and a secondary one to the patient. In this context, it is a reasonable expectation that the reviewer will stay within the guidelines established by the company.

With regard to violations of parity laws as described in your question, it is not the ethics responsibility of the reviewing psychiatrist to determine whether the plan is meeting parity law requirements. Presumably, that would be outside his employment and obligations. If the plan is not following parity requirements, then others, including the patient or the treating psychiatrist, may take some action against the plan. The primary duty of the reviewing psychiatrist in this situation is to evaluate whether the requested treatment is warranted and covered by the plan. It would be unethical for the psychiatrist to deny care that was in fact covered by the plan. Nevertheless, some may wish to argue that the reviewer may be seen as obligated to advocate for change in the managed care plan. That is a laudable goal, but not one that can be mandated for those psychiatrists who are reticent about engaging in political advocacy. (December 2015)

Additional Resources:

- American Academy of Psychiatry and the Law. 2005. *Ethics Guidelines for the Practice of Forensic Psychiatry*. Available at <http://www.appl.org/ethics.htm>.
- American Academy of Psychiatry and the Law. 2013. *Ethics Questions and Answers: Opinions of the AAPL Committee on Ethics*. Available at <http://www.appl.org/docs/pdf/Ethics%20Questions%20and%20Answers.pdf>.

- American Psychiatric Association Ad Hoc Work Group on Revising the Ethics Annotations. 2015. *Commentary on Ethics in Practice*. Available at <https://www.psychiatry.org/psychiatrists/practice/ethics>.
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- Plakun, Eric. 2017. *Psychotherapy, Parity, and Ethical Utilization Management*. *Journal of Psychiatric Practice* 23:49-52.
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- Sandel, Michael. 2009. *Justice*. New York: Farrar, Strauss and Giroux.
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- Strasburger, Larry, Thomas Gutheil, and Archie Brodsky. 1997. *On Wearing Two Hats: Role Conflict in Serving as Both Psychotherapist and Expert Witness*. *American Journal of Psychiatry* 154, 4:448-56.
- Timmons, Mark. 2013. *Moral Theory: An Introduction, Second Edition*. Lanham, MD: Rowman & Littlefield.
- Weinstock, Robert. 2015. *Dialectical Principlism: An Approach to Finding the Most Ethical Action*. *Journal of the American Academy of Psychiatry and the Law* 43:10-20.