

A Recent Development on Wilderness Therapy Treatment

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In the past few years, nearly a dozen proposed class actions have challenged health plans' alleged failure to cover wilderness therapy as a means of treatment for mental health and substance use disorders. Wilderness therapy seeks to treat young people with behavioral or substance abuse issues by combining traditional therapy methods with outdoor activities such as hiking and camping. Costs for such care can exceed \$500 per day for programs lasting weeks, months, and sometimes years.

The plaintiffs brought a putative class action against Blue Cross and Blue Shield of Massachusetts HMO Blue, Inc. and Blue Cross and Blue Shield of Massachusetts, Inc. (collectively BCBS) alleging that BCBS improperly denied claims for the costs of treating their children's mental health issues in wilderness therapy programs. The plaintiff's Second Amended Complaint set out the three following claims: (Count I) plan enforcement under the Employee Retirement Income Security Act of 1974 (ERISA), (Count II) breach of protections under the Mental Health Parity and Addiction Equity Act, and (Count III) breach of fiduciary duty under ERISA and the Mental Health Parity and Addiction Equity Act.

BCBS moved to dismiss Counts I and III, and the court agreed, see *Cotten v. Blue Cross & Blue Shield of Mass. HMO Blue, Inc.*, No. 16-12176-RGS, 2018 BL 451218 (D. Mass. Dec. 06, 2018). The ruling is noteworthy because the court followed the rationale used in dismissing similar lawsuits against Harvard Pilgrim Health Insurance Co. and Aetna Life Insurance Co.

BCBS stressed to the court that the language in the plan specifically excludes coverage for residential or other care that is "custodial care," which includes services that are performed in educational, vocational, or recreational settings, and outward bound-type, wilderness, camp, or ranch programs.

BCBS must still defend the allegation that it breached the protections provided by the Mental Health Parity and Addiction Equity Act (Count II). We will keep you apprised of any court decisions on this count.

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