

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

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 PEOPLE OF THE STATE OF NEW YORK, by : **COMPLAINT**
 LETITIA JAMES, Attorney General :
 of the State of New York, :
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 : Civil Action No. 21-cv-4533
 Plaintiff, :
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 — against — :
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 UNITED HEALTH GROUP :
 INCORPORATED, UNITED BEHAVIORAL :
 HEALTH (d/b/a OPTUMHEALTH :
 BEHAVIORAL SOLUTIONS), UNITED :
 HEALTHCARE INSURANCE COMPANY, :
 OXFORD HEALTH INSURANCE, INC., :
 OXFORD HEALTH PLANS, LLC, OXFORD :
 HEALTH PLANS (NY), INC., UNITED :
 HEALTHCARE INSURANCE COMPANY OF :
 NEW YORK, and UNITEDHEALTHCARE OF :
 NEW YORK, INC., :
 :
 Defendants. :
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Plaintiff, the People of the State of New York, by its attorney, LETITIA JAMES, Attorney General of the State of New York, alleges upon information and belief the following against UnitedHealth Group, Incorporated (“UHG”), United Behavioral Health (“UBH”), United Healthcare Insurance Company (“UHIC”), Oxford Health Insurance, Inc. (“OHI”), Oxford Health Plans, LLC (“OHP”), Oxford Health Plans (NY), Inc. (“OHP-NY”), UnitedHealthcare Insurance Company of New York (“UHIC-NY”), and UnitedHealthcare of New York, Inc. (“UHC-NY”) (collectively, “Defendants”):

PRELIMINARY STATEMENT

1. For years, the nation’s largest health insurance company has – including during the coronavirus (“COVID-19”) pandemic – systematically and illegally limited consumers’ access to potentially life-saving mental health and substance use disorder treatment. As the opioid epidemic, the suicide epidemic, and the COVID-19 pandemic took a heavy human toll, United improperly denied or reduced thousands of claims for these critical health services. This lawsuit seeks an end to Defendants’ discriminatory practices and restitution for those who have suffered under them.

2. Mental and emotional well-being is essential to overall health. Each year, one in five New Yorkers has symptoms of a mental disorder, and one in ten adults and children in New York experience mental health challenges serious enough to affect functioning in work, family and school life. Mental illness is a major cause of death (via suicide), and a driver of school failure, unstable employment, poor overall health, incarceration and homelessness. The National Institute of Mental Health reports that mental health and substance use (together, “behavioral health”) disorders are among the leading causes of disability in the United States.

3. In recent years, the opioid epidemic has taken an increasingly deadly toll. According to the Centers for Disease Control and Prevention (“CDC”), more than 3,600 New Yorkers died from opioid overdoses in the twelve-month period ending in July 2020, a 22% increase from 2018.

4. The COVID-19 pandemic has further exacerbated the mental health and addiction crises facing this country. In June 2020, a CDC survey found that 40% of American adults reported at least one adverse behavioral health condition, including experiencing symptoms of mental

illness or substance abuse, related to the pandemic.¹ The CDC reported that, like COVID-19, these conditions were disproportionately affecting certain populations, including racial and ethnic minorities. According to a Gallup survey released in December 2020, Americans' assessment of their mental health is "worse than it has been at any point in the last two decades."²

5. The mental health of young people has been particularly harmed by COVID-19. A study published in *Pediatrics* in March 2021 reported a significantly higher rate of suicide ideation among youth in March and July 2020 and higher rates of suicide attempts in February, March, April, and July 2020, as compared with the same months in 2019.³

6. Outpatient psychotherapy and counseling are an integral part of behavioral health treatment for many individuals, and play a critical role in addressing these pervasive public health issues. According to the Substance Abuse and Mental Health Services Administration ("SAMHSA"), outpatient therapy and counseling is an evidence-based treatment for mental and substance use disorders.⁴ Rigorous clinical research studies have shown that a variety of psychotherapies are effective with children and adults, across diverse conditions.⁵ Numerous large-scale trials and quantitative evidence reviews support the efficacy of cognitive-behavioral therapy

¹ Centers for Disease Control, *Mental Health, Substance Use, and Suicidal Ideation During the COVID-19 Pandemic — United States*, Morbidity and Mortality Weekly Report June 24–30, 2020, 69(32); 1049–1057, available at <https://www.cdc.gov/mmwr/volumes/69/wr/mm6932a1.htm>.

² Brenan, M., *Americans' Mental Health Ratings Sink to New Low*, December 7, 2020, available at <https://news.gallup.com/poll/327311/americans-mental-health-ratings-sink-new-low.aspx>.

³ R. Hill, et al., *Suicide Ideation and Attempts in a Pediatric Emergency Department Before and During COVID-19*, *Pediatrics*, March 2021, 147 (3), available at <https://pediatrics.aappublications.org/content/pediatrics/147/3/e2020029280.full.pdf>.

⁴ Substance Abuse and Mental Health Services Administration, *Behavioral Health Treatments and Services*, available at <http://www.samhsa.gov/treatment>.

⁵ American Psychological Association, *Recognition of Psychotherapy Effectiveness* (2012), available at <http://www.apa.org/about/policy/resolution-psychotherapy.aspx>.

for alcohol and drug use disorders.⁶

7. The majority of individuals who use outpatient mental health services receive psychotherapy and/or mental health counseling.⁷ Psychotherapy and counseling services are most commonly delivered by psychologists and master's level clinicians, who comprise the majority of the behavioral health workforce.⁸

8. Because behavioral health treatment can be costly, many Americans depend on health insurance coverage to access services. For decades, health insurance companies provided little or no coverage for behavioral health treatment. Lack of access to behavioral health treatment, which can be caused by health plans' denials of coverage and other failures to properly administer benefits, can have serious consequences for consumers, resulting in interrupted treatment, more serious illness, and even death.

9. To overcome this legacy of discrimination, many jurisdictions enacted mental health and substance use disorder parity laws, in order to increase health insurance coverage and to reduce the stigma preventing many people from seeking treatment for mental illness and addiction.

10. In 2006, New York led the country by enacting a landmark behavioral health parity law known as "Timothy's Law," which, as originally codified in the New York Insurance Law, required health plans to cover inpatient and outpatient mental health treatment in a manner at least

⁶ McHugh, R.K., *Cognitive-Behavioral Therapy for Substance Use Disorders*, 33 *Psychiatr Clin North Am.* 511 (2010), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2897895/>.

⁷ Germack et al., *National Trends in Outpatient Mental Health Service Use Among Adults Between 2008 and 2015*, 71 *Psychiatric Services* 1127, 1132 (2020), available at <https://pubmed.ncbi.nlm.nih.gov/32907475/>.

⁸ Substance Abuse and Mental Health Services Administration, *Behavioral Health Workforce Report* (2020), at 27, available at <https://www.samhsa.gov/sites/default/files/saving-lives-mental-behavioral-health-needs.pdf>.

equal to those plans' coverage for physical health ailments. *See* 2006 N.Y. Sess. Laws Ch. 748.

11. In 2008, Congress passed the Mental Health Parity and Addiction Equity Act (“MHPAEA”), which prohibits covered group health plans from imposing treatment limitations on mental health and substance use disorder benefits (“mental health benefits”) that are more restrictive than the treatment limitations they apply to medical/surgical benefits. 42 U.S.C. § 300gg-26; 45 C.F.R. § 146.136(c). The essential health benefit regulations under the Affordable Care Act extend MHPAEA’s requirements to small and individual health plans. 45 C.F.R. § 156.115(a)(3). New York has modified its behavioral health parity laws to mirror, and to exceed, the requirements of MHPAEA. *See, e.g.*, 2019 Sess. Laws Ch. 57.

12. Defendants administer health benefits for hundreds of thousands of New Yorkers, including many who struggle with mental health and addiction challenges. As a result of Defendants’ violations, many members did not receive the behavioral health benefits to which they were entitled under their United Plans.

13. Defendants have violated their obligations under federal and New York parity laws and have improperly discriminated against members in two significant ways. These violations impair plan members’ ability to access outpatient psychotherapy and counseling services. Thus, individuals who may be in the throes of a mental health or addiction crisis may not be able to access treatment that could prevent their symptoms from worsening.

14. The first violation is that Defendants engage in stricter utilization review for outpatient behavioral health treatment as compared to outpatient medical/surgical health treatment. Defendants’ outlier management program, known as Algorithms for Effective Reporting and Treatment (“ALERT”), limits benefits for outpatient behavioral health benefits in a way that is broader and more aggressive than the programs that Defendants have in place for analogous

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