

## Health MVP: Zuckerman Spaeder's D. Brian Hufford

By Dani Kass

*Law360, New York (December 5, 2016, 2:32 PM EST)* -- Zuckerman Spaeder LLP partner D. Brian Hufford has made a career of getting insurance companies to expand mental and behavioral health coverage by challenging their internal processes, most recently winning class certification in two such suits against United Behavioral Health, earning him a spot as one of Law360's 2016 Health MVPs.

Hufford's team in September got U.S. Magistrate Judge Joseph C. Spero to approve a thousands-strong class of plan holders who were denied residential treatment or outpatient services despite arguments from UBH that medical denial claims can't be determined on a classwide basis. That Employee Retirement Income Security Act suit is one of several challenges that Hufford has brought against UnitedHealth Group Inc. and its subsidiaries, which landed him an MVP spot in 2015 as well.

"The issue is coming up with the right legal theory," Hufford said. "We're not asking for a finding by the court that benefits were denied and to award monetary relief, because that allows the defense to argue it's too individualized. Instead of doing that, what we're arguing is there's a breach of duty by relying on these flawed guidelines, and that the decision themselves were inherently flawed, so now they must reprocess claims."

The guidelines in question are the criteria that UnitedHealth uses to determine when coverage can be denied, something Hufford first discovered on a personal note. One of his sons had a rare skin condition, and when he finally found a doctor who could properly treat it, his insurer — which has since been bought by UnitedHealth — used such guidelines to cover only part of the costs.

"So much is done by insurance companies that is contained in a black box, done behind the scenes, and nobody really knows how they do it and how they make determinations to deny coverage," he said.

Going down that path eventually led to Hufford winning a massive \$350 million settlement against UnitedHealth in 2010, the largest amount ever for an ERISA benefit class action, the firm said. That suit alleged that UnitedHealth was determining its usual, customary and reasonable rates for out-of-network services by using a flawed database, to the detriment of policyholders.



Then in 2015, the Second Circuit handed Hufford another victory against the insurer in a case over mental health benefits. The appeals court said that under ERISA, policyholders had the right to sue the insurance company administering benefits, not just the plan or employer paying for the benefits. The U.S. Supreme Court refused to hear UnitedHealth's appeal.

But UnitedHealth is not Hufford's only target. In New Jersey, he has a federal potential class action pending alleging that Health Care Service Corp. violated the Mental Health Parity and Addiction Equity Act by refusing coverage for mental illness in residential treatment centers, although allowing such treatment for medical and surgical conditions. In March, the potential class beat a motion to dismiss.

He has also filed potential class actions against Aetna Inc. and Cigna Corp., claiming that they have refused to cover a treatment called transcranial magnetic stimulation, which is used to treat depression. The insurers claim that the treatment is experimental and investigational, but Hufford says it is safe, effective and covered by other insurers and Medicare.

Then in May, he hit Magellan Health Services and Blue Shield of California with a potential class action alleging that their guidelines restrict coverage for residential and intensive mental health and substance abuse treatment, the firm said.

"Our argument is those internal guidelines are far too restrictive and contrary to generally acceptable standards of care, and result in people not getting coverage to which they are entitled," Hufford said of his cases overall. "All too frequently their financial interest is influencing what they're doing and they're not providing proper standards and coverage for these kinds of services."

Launching these class actions is often hindered by the stigma and hardship that comes with mental and behavioral health issues, something insurers take advantage of, he said.

"[Potential lead plaintiffs] are worried about treating their loved ones or themselves, on top of fighting over reimbursement, on top of potentially being involved in years of litigation where their problems are publicized," Hufford said. "Insurance companies benefit from that because they know people won't challenge their decisions."

--Additional reporting by Y. Peter Kang. Editing by Stephen Berg.