

# W 3 legal topic

Business



School: W 3 LEGAL TOPIC Lecturer: Should managed care organizations be shielded from liability when utilization review results in an adverse event?

In the opinion of Kesselheim and Brennan (2013), the goal of health care delivery can never be achieved if cost is not matched fairly with quality.

What this implies is that as much as there will be the call for affordable health care, it is important to also call for quality health care at the same time so that quality will not be compromised through the effort of making healthcare affordable to all. It is out of such principles of health care that Stuart and Showalter, J. D. (2011) notes that the idea of managed care organizations was born. This is because managed care organizations have over the years served as a consortium of organizations that use various managed care techniques to bring both affordable care and quality care to care users (Svorny, 2011). While playing their role, their ethical and legal responsibilities that managed care organizations become bounded to. From the article of Leslie (1994), it would be noted that the application of ethical and legal principles go hand in hand. When arguing for whether or not managed care organization must be shielded from liability when utilization review results in an adverse event, it is important to consider both sides of the argument, namely ethical and legal.

From an ethical perspective, one would notice that once managed care organizations agree to be responsible for the health care of patients, they set delimitations that have to do with the fact that they do not become the direct care givers. Rather, the managed care organizations employ the services of health care service providers to give care. Meanwhile, adverse event can be noted to be a health risk that occurs at the point of reception of care.

According to the National Health Directorate, adverse event is considered an

<https://assignbuster.com/w-3-legal-topic/>

ethical issue that occurs at the time of receiving care from a professional (Kesselheim and Brennan, 2013). What this means is that when utilization review results in an adverse event, it is the professional health care provider that is to blame rather than the facilitator of the care. From this perspective, it can be argued that indeed managed care organization need to be shielded from ethical based liabilities that has to do with adverse event.

From a legal perspective also, it is always important to ask the question of what the regulations state (Leslie, 1994). Leslie (1994) actually noted that the contractual provisions of managed care organizations set an indemnity clause that attempts to establish their lack of liability. The basis for this legal provision is that in most of the cases, the managed care organizations do not lay claim of ownership of the health records of patients. What is more, most modern day managed care organizations make it possible for patients to select their own therapists and health providers. In such a situation, the sole role of the managed care organization becomes to serve as a facilitator through whom the patient gets care. Because of the freedom for the patient to select therapist and the indemnity clause, there is an absolute covering for the managed care organization, which is the right thing to do. This is because if there are liabilities against the managed care organizations, most service providers can serve as saboteurs who will neglect the need to provide professional care, knowing that when there is adverse event, it is the managed care organization that will take the responsibility.

#### References

Kesselheim A. S and Brennan T. A (2013). The Swinging Pendulum: The Supreme Court Reverses Course on ERISA and Managed Care. *Yale Journal of Health Policy, Law, and Ethics*. 5(1); 451-470

<https://assignbuster.com/w-3-legal-topic/>

Leslie R. S (1994). On Ethics: Managed Care: Ethical and Legal Considerations in Appealing Adverse UR Decisions. *The California Therapist*. 7(2); 1-7

Stuart J. and Showalter, J. D. (2011). *The Law of Healthcare Administration*. 6th edition New York: Health Administration Press.

Svorny S. (2011). Could Mandatory Caps on Medical Malpractice Damages Harm Consumers? *Policy Analysis*. 685; 1-8