

Families sue UnitedHealth over nH Predict algorithm used in Medicare Advantage denials

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A class action lawsuit was filed Tuesday against UnitedHealth Group and a subsidiary alleging that they are illegally using an algorithm to deny rehabilitation care to seriously ill patients, even though the companies know the algorithm has a high error rate.

The class action suit, filed on behalf of deceased patients who had a UnitedHealthcare Medicare Advantage plan and their families by the California-based Clarkson Law Firm, follows the publication of a STAT investigation Tuesday. The investigation, cited by the lawsuit, found UnitedHealth pressured medical employees to follow an algorithm, which predicts a patient's length of stay, to issue payment denials to people with Medicare Advantage plans. Internal documents revealed that managers within the company set a goal for clinical employees to keep patients rehab stays within 1% of the days projected by the algorithm. Advertisement

The lawsuit, filed in the U.S. District Court of Minnesota, accuses UnitedHealth and its subsidiary, NaviHealth, of using the computer algorithm to "systematically deny claims" of Medicare beneficiaries struggling to recover from debilitating illnesses in nursing homes. The suit also cites STAT's previous reporting on the issue .

"The fraudulent scheme affords defendants a clear financial windfall in the form of policy premiums without having to pay for promised care," the complaint alleges. "The elderly are prematurely kicked out of care facilities nationwide or forced to deplete family savings to continue receiving necessary care, all because an [artificial intelligence] model 'disagrees' with their real live doctors' recommendations."

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In an emailed statement, a UnitedHealth spokesperson said that the NaviHealth predict tool is not used to make coverage determinations. Advertisement

"The tool is used as a guide to help us inform providers, families and other caregivers about what sort of assistance and care the patient may need both in the facility and after returning home. Coverage decisions are based on CMS coverage criteria and the terms of the member's plan," UnitedHealth said in the statement. The company added that the "lawsuit has no merit and we will defend ourselves vigorously."

The lawsuit alleges that UnitedHealth knew the algorithm had an extremely high error rate and that it denied patients' claims knowing that only a tiny percentage — 0.2% — would file appeals to try to overturn the insurer's decision. The complaint alleges the algorithm, dubbed nH Predict, has a 90% error rate, basing that calculation on the percentage of payment denials reversed through internal appeals processes or administrative law judge rulings.

"This demonstrates the blatant inaccuracy of the nH predict AI Model and the lack of human review involved in the claims denial process," the lawsuit alleges. It accuses UnitedHealth and NaviHealth of breach of contract, breach of good faith and fair dealing, unjust enrichment, and insurance law violations in multiple states.

The plaintiffs leading the class-action lawsuit are the families of two deceased Wisconsin residents, both of whom had Medicare Advantage coverage through UnitedHealth. In May 2022, Gene Lokken, 91, fractured his leg and ankle, and stayed in a nursing home for a month with no physical therapy to allow his injuries to heal. After his doctor then approved Lokken to start physical therapy, UnitedHealth and NaviHealth paid for only 19 days of therapy in the nursing home before saying Lokken was safe to go home, according to the lawsuit.

Lokken's doctors and therapists appealed the payment denials, saying his muscles were "paralyzed and weak," to no avail, the complaint reads. To keep receiving the care in the nursing home, Lokken and his family paid

approximately \$150,000 over the next year, until he died in July 2023.

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Dale Tetzloff, 74, suffered a stroke in October 2022, and his doctor immediately recommended long-term care in a nursing home. UnitedHealth and NaviHealth cut off his care after 20 days, the lawsuit says. Tetzloff and his wife appealed and paid for his care out of pocket during that time. His doctors submitted records saying Tetzloff needed more time to recover, but the companies upheld their denials.

Tetzloff asked UnitedHealth and NaviHealth why they issued denials, and the companies "refused to provide any reason, stating that it is confidential," according to the complaint. He and his wife spent \$70,000 for his care. Tetzloff died in an assisted living facility this past October.

UnitedHealth has asserted in response to STAT's reporting that its physician medical reviewers provide a check by making a final determination about whether a patient is issued a payment denial. But those physicians are reviewing denial recommendations sent to them by clinical case managers who are subject to the company's 1% performance target.

The company's algorithm is not just used to predict the care needs of patients with UnitedHealth policies. It is also used by the nation's second-largest Medicare Advantage insurer, Humana, as well as several regional health plans.

Former case managers at NaviHealth said they were subject to discipline, including possible termination, even if the patients they managed met Medicare criteria for receiving additional care.

This story is part of a series examining the use of artificial intelligence in health care and practices for exchanging and analyzing patient data. It is supported with funding from the Gordon and Betty Moore Foundation

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