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## **NYSPA Fires First Legal Salvo Over Mental Health Parity Law**

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Apr 09, 2013

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The New York State Psychiatric Association (NYSPA) has filed a class-action lawsuit against UnitedHealth Group over violations of the Mental Health Parity and Addiction Equity Act, an action that at least 1 expert says is a harbinger of more suits to come.

Filed in the United States District Court for the Southern District of New York, the suit charges that UnitedHealth has seriously restricted psychotherapy for patients needing long-term treatment and has made it extremely difficult to obtain intermediate levels of care, such as intensive outpatient treatment and partial hospitalization.

In addition, the suit charges that the insurer put up barriers to initial and continuing authorizations for psychiatric care. The NYSPA reported that it has spent the past year trying to resolve the complaints with UnitedHealth but was unsuccessful, giving the NYSPA no choice but to move forward with litigation.

"Enforcement of existing state and federal statutes is paramount to ensure that individuals with mental illness receive access to necessary and appropriate care and treatment," said Seth P. Stein, executive director and general counsel of the NYSPA, in a release.

Henry Harbin, MD, member of the American Psychiatric Association (APA) Workgroup on Health Reform and Parity and member of the Parity Implementation Coalition, told *Medscape Medical News* that he is not surprised by the lawsuit.



Dr. Henry Harbin

"There have been a number of issues with enforcing the law, which is due in part to lack of clarity in the regulations released. And the area of medical management parity, the nonquantifiable treatment

limitations, has had the most confusion," said Dr. Harbin, who is also a psychiatrist and healthcare consultant in Baltimore, Maryland.

"I've seen a lot of these types of complaints. Without a robust, clear, and final parity rule, I think there will be many more lawsuits."

### **Violation Registry**

As reported last week by *Medscape Medical News*, the APA is urging its members to go to [its Web site](#) and report any incidents of insurers refusing to pay for services from the new psychiatry section of the Current Procedural Terminology (CPT) codes. The organization's plans include gathering data, helping clinicians to solve problems, and initiating litigation if needed.

A statement sent out to APA members noted that the new CPT code changes "have been used as an excuse by some payers to discriminate against psychiatric patients and their psychiatrists."

"We believe that the whole process and manipulation of rates is a means to deny access to care and mental health treatment to people who are already paying for it," said Colleen M. Coyle, general counsel for the APA, at the time.

Dr. Harbin added that clinicians should not only register complaints with the APA but also with the US Department of Health and Human Services and the Department of Labor.

"These are the enforcement entities, and registering will let them know of the problems that are being run into. Because they have not finalized the parity regulations, it's important for them to know what providers are running across," he added.

### **On the Offensive**

The NYSPA said in a release that it "has joined as first named plaintiff" in its suit because of the way UnitedHealth Group and its subsidiaries, including United Behavioral Health, have addressed "access to coverage for mental health care, arbitrary medical necessity decisions, and violation of state and federal parity laws."

Specifically, the 100-page class-action lawsuit charges that the insurer allows only weekly psychotherapy sessions for patients who are actively suicidal and who have been hospitalized frequently.

It also charges that beneficiaries with psychiatric or substance abuse disorders have had "a great deal of difficulty obtaining initial and continuing authorizations for intermediate levels of care." Complaints from 3 specific beneficiaries are cited.

"NYSPA has joined the suit in a representational capacity on behalf of its members and their patients, and the complaint includes many issues currently facing psychiatrists in New York, including the refusal to reimburse E/M [evaluation and management] codes, continuing requirements for outpatient treatment reports, and the refusal to cover the new CPT codes," said the organization in a release.

"This lawsuit allows us to go on the offensive in this struggle, and we are confident we will prevail to the benefit of our patients and colleagues," said Glenn Martin, MD, president of the NYSPA, in a news alert put out by *Psychiatric News*.

Dr. Harbin noted that parity law basically says that an insurer cannot apply any kind of limit to care "that is more stringent on mental health than on the medical side."

Interestingly, he believes that this case and others could potentially be settled if insurers would be more forthcoming with disclosing how their payment criteria are applied for behavioral health vs medical health procedures.

However, "I have yet to see any health insurer disclose the details of how they apply medical management criteria on the medical side, although many have been pretty good about disclosing data on the mental health side. The complaint here is that United is not explicit enough. What is the protocol or algorithm that they're using?"

### **Clear Line in the Sand**

In 2010, the Parity Implementation Coalition provided an analysis showing that "outpatient clinicians were generally paid 10% to 15% below Medicare allowable rates for behavioral patients vs general medical patients," said Dr. Harbin.

"With the E/M codes, you have generally the same definition of what a procedure is, whether you're a psychiatrist or a general practitioner. And if a plan is paying less, it appears, at least on the face of it, that it's a parity violation. That's when you've got to ask about the payment processes and how they were applied for medical vs the behavioral side so you can decide whether to act on it or not," he explained.

Dr. Harbin noted that many insurers have said that their medical/surgical criteria are publicly available on their company Web sites. However, the broad data, which often come to 300 pages, do not explain how the criteria are applied.

"The parity law says that how you apply the criteria is as important as what you apply. That's really the key. In the United case, they haven't been clear exactly what the criteria is on the mental health side, and they haven't been disclosive at all about how they do that on the medical side," he said.

"In my opinion, it would be compliant with the parity law if United was applying these algorithms to high-cost outpatient cases and doing concurrent review if that same intervention is being done with a significant part of the medical/surgical benefits. But they have not, to my knowledge, disclosed that. And this is the heart of many of the parity complaints that I've seen."

He added that once the final parity rule is released, if it provides greater definitions of what needs to be disclosed, then the number of future lawsuits will likely be reduced.

"I really feel like a lot of litigation would be avoided if the final regulations were clearer or there's more enforcement of the current law. It's a clear line in the sand: insurers either provide that data or you have no choice as a consumer but to go to court," concluded Dr. Harbin.

### Editors' Recommendations

- [APA Willing to Sue Insurers Over CPT Code Violations](#)
- [Large HMO Cited in Mental Health Care Cover-up](#)
- [Many Insurers Still Trying to Skirt Mental Health Parity Law](#)



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*Medscape Medical News, 2013-04-09*

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