

MENTAL HEALTH WEEKLY

Essential information for decision-makers

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Psychologists file lawsuit against New Jersey insurers over privacy violation

Citing a violation of patient confidentiality rights, restricted access to care, and a waste of taxpayer's money, the New Jersey Psychological Association (NJPA) has filed a lawsuit against the state's health insurance administrative agency, and two health insurance providers, including Magellan Health Services.

The lawsuit alleges that the New Jersey State Health Benefits Commission, along with Horizon Blue Cross Blue Shield of New Jersey (BCBSNJ) and Magellan improperly require mental health providers to turn over protected confidential mental health records of patients enrolled in the state health benefits program as a pre-requisite to authorizing treatment by a psychologist, continuing a course of treatment, or

Bottom Line...

N.J. providers are concerned about being faced with potential liability for improper disclosure of confidential mental health records, according to the lawsuit, which observers say could have national implications.

paying for services already provided.

NJPA is a private, non-profit, professional organization representing more than 2,100 psychologists throughout the state. The New Jersey State Health Benefits Commission is the government agency that established the State Health Benefits Program. The Commission negotiates and purchases medical benefits on behalf of approximately 800,000

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Vermont advocate who elevated MH issues plans to retire at end of 2010

One of the most recognizable and accomplished mental health advocates at the state level has announced he will retire at the end of the calendar year, but Ken Libertoff is showing no signs of winding down from his busy pace as executive director of the Vermont Association for Mental Health.

Recently told by a colleague that he was smart to be retiring because 2010 promised to be a "horrible year" for mental health

issues in his state, Libertoff countered that he always stands ready for difficult budget and policy battles. "If you're a mental health advocate, every year is a tough year on budget issues," he told MHW. "But we can make it a good year."

Libertoff, 65, informed colleagues at the start of this year that at the end of 2010 he will conclude a 30-year career in advocacy in Vermont, a state that has set a tone nationally for bold mental health policy. Two signature accomplishments attributed largely to the advocacy efforts of Libertoff's association are a 1997 state parity law that has served as a national model for comprehensiveness and a 2009 law mandating unprecedented disclo-

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Bottom Line...

Ken Libertoff is credited with creating a voice for the mental health community in Vermont's legislative process, as well as nurturing bipartisan support for crucial initiatives.

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state employees and their families.

While the lawsuit was filed in December, NJPA formally announced it last week to coincide with the launch of their website — which caters to consumers affected by the breach in confidentiality — and to engage the public and mental health groups in its patient advocacy campaign efforts.

According to the lawsuit, insurance companies are violating patient confidentiality rights covered under the New Jersey Practicing Psychology Licensing Act, which prohibits psychologists from disclosing confidential communications and treatment notes and records to anyone, other than through written authorization from the patient detailing specific confidential health records be disclosed, and the purpose for the disclosure.

The three key points of the lawsuit are that patients are being harassed, and denied treatment access and choice; it's costing the state a lot more money in administrative costs rather than patient care; and it's violating a patient's right to privacy, Barry L. Helfmann, Psy.D., director of professional affairs for

'By protecting patients' privacy and intervening early, we're reducing all collaborative costs — medical, disability, and loss of time from work.'

Barry L. Helfmann, Psy.D.

NJPA and a plaintiff in the complaint, told *MHW*.

The two insurers and the administrative agency are attempting to manage out-of-network benefits as if they are in-network benefits, thereby taking away the right of members who pay to choose an out-of-network provider and not be intruded upon, said Helfmann. "We're asking for the judge to make a declaratory judgment that the defendants are violating the law and that they must cease and desist," Helfmann said.

"So many people have been affected by the mismanagement of outpatient mental health care," added Helfmann. "This is a thinly veiled attempt to switch money from patient care to the insurance companies."

National implications

Helfmann said he believes New Jersey is the first state to file a lawsuit of this type and that it could have national implications regarding doctor/patient confidentiality. "We believe that the issue of privacy is going to apply to all mental health

professionals," said Helfmann.

Social workers, psychiatrists, nurse practitioners all have in their respective licensing laws that provide protection of confidential conversations between them and their patients, he said. "In my opinion this will apply to other states as well," Helfmann said.

"By protecting patients' privacy and intervening early, we're reducing all collaborative costs — medical, disability, and loss of time from work, he added.

In a joint statement, Horizon Blue Cross Blue Shield of New Jersey and Magellan cited medical necessity and said that the lawsuit is "without merit." It is their priority to see that members receive proper treatment, said officials, adding that each organization respects the confidentiality rights of its members.

The information requested from providers by Magellan is entirely appropriate and consistent with applicable federal and state laws and the provisions of the New Jersey State Health Benefits Program,

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which require Horizon BCBSNJ and Magellan to ensure treatment meets the medical necessity requirements of the Program, according to the statement.

Cost issues

The immediate past president of the NJPA, noted that the requirement for providers to turn over confidential mental health records not only harms patients in terms of denying them access to care, it is also not cost-effective.

"During these economic times we're looking to be cost-effective, and to deliver access to care and quality of care for people suffering from emotional problems without adding another layer of case management that wastes money," Phyllis

Lakin, Ph.D., immediate past president of the NJPA, told *MHW*.

Some insurance companies spend up to 50 percent of every dollar on paperwork and administration — not on patient care, said Lakin. "These harmful case management practices harm patients, wastes taxpayer money, and threatens patient privacy," said Lakin, citing the 1999 Surgeon General's report on mental health which asserts that confidentiality is critical to effective therapy.

"Approximately 60 to 70 percent of visits to PCPs are related to mental health issues and not physical ailments, said Lakin. "We can reduce the risk of costly medical problems that affect many people with mental health issues," she said.

"Our patients are often unwilling

and afraid to come forward due to the stigma of mental illness in our society, the potential effect on their work, family, and community status," said Lakin. They prefer to remain anonymous. We are looking to become the voice for patients in advocating for cost-effective mental health services."

The lawsuit is ultimately about the patients' rights, added Helfmann. "This is a lawsuit for the public, not principally for professionals or psychologists," he said. "This is not essentially a pocketbook issue for us; we're funding this lawsuit ourselves. This is the right cause, at the right time and for the right reasons." •

For more information about NJPA's patient advocacy campaign, visit <http://speakyourmindnj.org>.