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**OPEN MINDS On-Line News**

*Mental Health & Chemical Dependency Services*

## **New Jersey Psychological Association Sues New Jersey Health Benefits Commission Over Requests for Therapists Treatment Notes**

On February 23, 2010, the New Jersey Psychological Association (NJPA) sued the New Jersey Health Benefits Commission, Horizon Blue Cross Blue Shield of New Jersey (Horizon BCBSNJ), and Magellan Health Services, Inc., for requesting confidential patient information revealed during treatment. NJPA alleges that Horizon and Magellan requested therapists' notes and the treating psychologist's guidance and counseling provided to state employees. NJPA said the request violated the state's Practicing Psychology Licensing Act which prohibits psychologists from disclosing patient communications and treatment notes unless authorized by the patient. In a statement, Horizon BCBS and Magellan said the lawsuit was without merit. The lawsuit was filed in Superior Court in Mercer County, New Jersey.

The issue in *New Jersey Psychological Association vs. New Jersey State Health Benefits Commission; Horizon Healthcare Services, Inc.; and Magellan Health Services, Inc.*, is New Jersey's confidentiality law that prohibits psychologists from disclosing patients' treatment records without express consent of the patient. Psychologists are permitted to provide minimal information—dates of requested service, the primary diagnostic code, and the Current Procedural Terminology code describing the services to be rendered—to third-party payers to facilitate coverage, benefit, and payment determinations. Through an exemption in the law, with patient authorization, third-party payers are permitted to request additional information for utilization and peer review on behalf of privately offered health plans, such as group health plans offered by employers or unions. However, the type of information additional information that can be requested is limited. The State Health Benefits Program does not fall within the exemption to the confidentiality statute's limitation on the type of information that can be requested.

The plaintiffs allege that Magellan is asking psychologists treating state employees covered by health insurance through Horizon BCBSNJ to disclose treatment plans, treatment notes that may reveal patient thoughts and feelings revealed during therapy, and information about the underlying cause or causes of the patient's mental health condition. The information requested exceeds utilization and peer-review information requested by Magellan to make coverage, benefit, and payment determinations for beneficiaries of private sector health plans using Magellan's services. The plaintiffs allege that the information is being requested to discourage state employees covered by Horizon BCBSNJ from seeking psychological treatment, to reduce or deny mental health benefits provided under the State Health Benefit Program.

State employees are required to fill out an application form when they sign up for the program with very general language saying that they agree that medical records may be released for review. However, the application form is typically filled out and signed long before mental health issues arise, before any treatment is sought. Additionally, the application does not tell employees that their medical information is protected from disclosure by statute, does not tell them that they may be waiving the protections and does not describe the type of mental health treatment information that may be requested in the future for

utilization or peer-review purposes.

Horizon BCBSNJ and Magellan feel the NJPA lawsuit is without merit. In a written statement responding to the lawsuit, they said their priority is to see that members receive proper treatment and that the information Magellan requests from providers is appropriate and consistent with applicable federal and state laws and the provisions of the New Jersey State Health Benefits Program, which require Horizon BCBSNJ and Magellan to ensure treatment meets the medical necessity requirements of the Program. The companies said, “Nothing in the New Jersey Practicing Psychology Licensing Act or any other law changes the member’s obligation to satisfy medical necessity requirements for coverage under the State Health Benefits Program or requires the Program to fund benefits without information establishing medical necessity.”

The New Jersey Psychological Association (NJPA) is a private, non-profit, professional organization representing more than 2,100 psychologists throughout the state. The New Jersey State Health Benefits Commission operates the State Health Benefits Program which provides medical benefits on behalf of approximately 800,000 public employees and their families. Horizon is responsible for administering and issuing payments for mental health benefits provided under the State Health Benefits Program. Magellan is a specialty managed health care company that coordinates the management and delivery of behavioral health care treatment services and, in that capacity, manages, reviews, and authorizes mental health benefits to members of the New Jersey State Health Benefits program.

A link to the full text of “*New Jersey Psychological Association vs. New Jersey State Health Benefits Commission; Horizon Healthcare Services, Inc.; and Magellan Health Services, Inc.*,” may be found in *The OPEN MINDS Circle Library* at [www.openminds.com/circlehome/eprint/indres/123109mhcdnjpa.htm](http://www.openminds.com/circlehome/eprint/indres/123109mhcdnjpa.htm).

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