Advocates say mental health parity law, insurers not fulfilling promise

When Michael Kamins opened the letter from his health plan he was enraged by what he encountered, a part of critics see as medical necessity's "last hurrah."

His 20-year old son recently had been hospitalized twice with bipolar disorder and rescued from the brink of suicide, he said. Now, the insurer said he had improved and it was no longer medically necessary for the young man to see his psychiatrist two times a week. The company would pay for two visits per month.

“There was steam coming out of my ears,” Kamins recalled, his face reddening at the memory of that day in June 2012. “This is my kid’s life!”

His son again became suicidal and violent, causing him to be rehospitalized eight months later, said Kamins, a marketing professor at the State University of New York, Stony Brook. Kamins is suing the insurer, OptumHealth Behavioral Solutions, which disputes his version of events and denies that it left the young man without sufficient care.

Seven years after Congress passed a landmark law banning discrimination in the treatment of mentally ill people, many families and their advocates complain it stubbornly persists, largely because insurers are subverting the law in subtle ways and the government is not aggressively enforcing it.

The so-called parity law, which was intended to equalize coverage of mental and other medical conditions, has gone a long way toward eliminating obvious discrepancies in insurance coverage. Research shows, for instance, that most insurers have dropped annual limits on the therapy visits that they will cover. Higher copayments and separate mental health deductibles have become less of a problem.

But many insurers have continued to limit treatment through other strategies that are harder to track, according to researchers, attorneys and other critics. Among the more murky areas is “medical necessity” review, in which insurers decide whether a patient requires a certain treatment and at what frequency.

Kamins is among a small group of people around the country to file lawsuits alleging federal or state parity laws were violated when patients with mental illness were held to a stricter “medical necessity” standard than those with other medical conditions.
“‘Medical necessity’ is the insurers’ last hurrah,” said Meiram Bendat, Kamins’ attorney, who filed the lawsuit in New York State court.

Bendat, who is seeking class-action status in the Kamins case and has filed other parity suits in New York, Illinois and California, said attorneys are acting because the government won’t.

Enforcement of parity laws is lax, he said, and companies are getting away with skirting their requirements.

In fact, only a handful of states have dug into whether insurers are complying with parity laws. And in the seven years since the federal law was passed, the U.S. government has not taken a single public enforcement action against an insurer or employer for violating the law.

Clare Krusing, a spokesperson for America’s Health Insurance Plans, the industry’s main trade group, said it is “a misperception” that enforcement has been weak. Insurers are working closely with federal and state governments, she said, and “have taken tremendous steps to implement these changes and requirements in a way that is affordable to patients.”

Ensuring that mental health and other medical treatments are exactly on par is challenging, she said.

“A treatment plan for diabetes or a chronic heart disease is very different from a treatment plan for a patient that’s seeking care for depression or another mental illness,” she said. “It’s not a math formula.”

But Henry Harbin, former CEO of Magellan Health, a managed behavioral health care company, said insurers are taking advantage of minimal oversight.

“They can micromanage care down to almost nothing,” said Harbin, who also served as Maryland’s mental health director before becoming a consultant. “The enforcement in this area is a joke.”

**Great Expectations**

When it passed in 2008, the federal mental health parity law was seen as a major achievement for Americans with mental illnesses.

Though some states already had their own parity laws on the books, there were serious gaps in the protections they offered. This law was to force insurers across the country to provide the same access to treatment as they do for cancer, diabetes and other conditions.
At the time, Sen. Edward Kennedy called the law “historic,” and praised his colleagues for finally ending “the senseless discrimination in health insurance coverage that plagues persons living with mental illness.”

But enforcement was not assigned to any one agency. Instead, it fell to the departments of Labor, Health and Human Services and Treasury, as well as state insurance commissioners.

The Department of Labor, which is responsible for monitoring health insurance offered by large employers, set up a complaint line for consumers. Still, advocates say, most consumers don’t know they have new rights, and those that do often don’t know where to turn.

“It gets very complicated for the average person,” said Carol McDaid, who runs the Parity Implementation Coalition, an advocacy group created to make sure parity laws were properly enforced.

“They’re already in a [mental health] crisis, looking for help, and they don’t know if they should write and complain to their state insurance commissioner, the Department of Labor, the health department. It gets very difficult.”

Since 2010, just 867 of the 1.5 million total health insurance inquiries made to the Department of Labor had to do with the parity law, most of which were not complaints, a spokesman for the department said in May. A total of 140 cases of alleged parity law violations were found, and they were resolved through “voluntary compliance,” in which the employer agreed to pay for the patient’s services, the spokesman said. He said that the investigators also requested that the insurers change their broader policies, when appropriate.

Separately, HHS found 196 possible violations of parity law by insurers from September 2013 through September 2014, a spokeswoman said. In each case, she said, plans voluntarily made changes or told the agency they believed their plan was in compliance with the law.

No action by a federal agency, however, resulted in a lawsuit, fine or public announcement.

“Our problem is that these investigations are all kept secret,” McDaid said. That means the decisions have no effect on what other employers or insurers do, and consumers don’t learn what to look out for, she said.

Former congressman Patrick Kennedy, one of the authors of the parity law, said timing was partly to blame for the administration’s sparse enforcement record.
“Parity got kicked down the track until the Obama administration could get the Affordable Care Act on track,” he said. It took five years for the government to issue final rules explaining exactly what insurers had to do to comply.

Enforcing laws against insurance companies, he added, was also a delicate undertaking.

“Insurance companies were part of the coalition that helped bring the ACA to life, and the administration feels an enormous debt of gratitude,” he said. “It’s a challenge politically to then step on the toes of those that brought them to the dance.”

Meanwhile, research points to some continuing inequities in coverage.

Data compiled on health plans in 2010, the first year of the national parity law’s implementation, found that insurers frequently reviewed mental health treatment more strictly than other care. For instance, they more often required “preauthorization” for doctor visits or made patients “fail first” at one level of care before getting approval for another.

A study this year from the Johns Hopkins Bloomberg School of Public Health found that a quarter of the plans sold on two state Obamacare exchanges appeared to violate the federal parity law in various ways, including requiring higher cost-sharing for mental health. The states, one large and one small, were not named.

In a 2015 survey by the National Alliance on Mental Illness, an advocacy group for mentally ill people and their families, patients said they were denied payment because treatment was deemed “not medically necessary” twice as often for mental health as for other medical conditions.

Without strong government enforcement, patients and families say they are left to their own devices.

But demonstrating that an insurer has violated parity rules requires a detailed analysis of a plan’s mental health and medical benefits. And though the law requires that insurers disclose those documents, critics say they often are not complying.

The Parity Implementation Coalition in Washington D.C., has received hundreds of consumer complaints to its helpline, but McDaid said virtually none of the health plans have been willing to release the necessary documents to demonstrate that there has been a parity violation, she said.

Krusing of the insurers’ association insisted that documents are being made available to patients and providers. “Plans are committed to being transparent about their coverage decisions,” she said. Decisions to deny treatment, she said, are based on ensuring that patients receive care based on the best medical evidence.
“We are still at a point in the health system where patients face wide variation in the type of care they’re receiving,” she said. “Oftentimes we see tests and procedures done that are costly and unnecessary for the type of care that they’re seeking or even help or benefit their condition.”

The federal government is considering whether to tighten disclosure rules for insurers. In the meantime, some consumers, including the Kamins family, are turning to the courts.

**Debating What’s ‘Medically Necessary’**

Kamins’ son had always been a star, according to his father, who holds his power of attorney and asked that the young man’s first name be withheld for privacy reasons.

As a boy, he was a quiet but quick-witted jokester, who graduated fifth in his high school class in 2010, Kamins said.

A few months after heading to an Ivy League college, however, he was overcome by depression, his father said. His grades slipped. He began experimenting with drugs. Then, in the spring of 2011, he tried to kill himself, according to Kamins and the lawsuit.

His parents brought him home to Los Angeles, where the family lives while Kamins commutes back and forth to New York. The family has insurance through Kamins’ job.

But Kamins said OptumHealth Behavioral Solutions would not cover inpatient care before his son had tried an outpatient program that focused on drug addiction.

That marked the first of several violations of parity law, according to Kamins’ lawsuit, which seeks a change in Optum’s policy and reimbursement for benefits denied, plus attorneys’ fees. By requiring the young man to “fail first” at a lower level of care before paying for more expensive residential treatment, Optum, a subsidiary of UnitedHealth Group, had created an illegal obstacle to mental health treatment, the lawsuit alleges.

“Imagine someone going to a hospital and being told you can’t get open-heart surgery in the midst of a heart attack because you haven’t tried aspirin or nitroglycerin first. That’s the absurdity of it,” said Bendat, Kamins’ lawyer. “It’s just a way to discourage higher levels of care that we would never tolerate in the non-psychiatric context.”

After the addiction program, Optum paid for the young man to see a psychiatrist a few times a week. His father said he began showing signs of improvement and seemed on track to return to school back East.

But in June 2012—four months after the young man was hospitalized during a manic episode—the insurer’s letter arrived saying it was no longer “medically necessary” for him to see his psychiatrist so frequently.
That fall, the suit alleges, Kamins’ son tried to return to his Ivy League school. He found a psychiatrist and began going twice a month as he had been authorized to do in the letter, Bendat said. Kamins said he tapped into his retirement fund to pay for extra visits, but his son spiraled downward.

In court documents, Optum alleges that Kamins’ son actually was entitled to more frequent visits with a new mental health provider, suggesting that the limitation on visits applied only to the psychiatrist he had been seeing in California. The insurer argues that his subsequent hospitalization in February had nothing to do with limitations put on visits in California.

In a written statement, Optum officials said they “take the mental health needs of each of our members very seriously, and we are committed to helping them get care that has shown to be most effective in helping people overcome and live better with mental and emotional challenges.”

Kamins said that was not his experience.

“The irony in all this is that Optum fights tooth and nail to dole out care for my son. But had they allowed him upfront to get the care he needed, he might not have ended up back in the hospital, which they had to pay for,” he said.

As for Kamins’ son, he returned to college in the fall of 2013. The next year, his father’s employer contracted with a new insurer, which Kamins said gave the young man greater access to care and helped him stabilize. Now 23, he is scheduled to graduate next year.

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advocates-say-mental-health-parity-law-insurers-not-fulfilling-promise