Psychiatrists' Limited Ability to Raise the Statutory Rights of their Patients

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Psychiatrists Were Found to Lack a Cause of Action Necessary to Bring Civil Action Against Insurance Companies on Behalf of Their Patients

In *Am Psychiatric Ass'n v. Anthem Health Plans, Inc.*, 821 F.3d 352 (2d Cir. 2016), the United States Court of Appeals for the Second Circuit affirmed the district court's decision that individual psychiatrists and psychiatric associations lacked the necessary cause of action and standing, respectively, to bring civil action against health insurance companies for alleged discrimination against patients with mental health and substance use disorders with regard to their reimbursement practices. Even though patients with mental illness and addictions may represent a vulnerable population that is experiencing discrimination, based on the court's ruling, psychiatrists are not in a position to represent their patients' interests on these issues in civil actions.

Facts of the Case

There has been a history of health insurance companies either failing to provide mental health and addiction services or reimbursing for these services at a less favorable rate than for services for nonmental health conditions. In 2008 Congress enacted the Mental Health Parity and Addiction Equality Act (MHPAEA) to address this problem. The act required that the "financial requirements" and "treatment limitations" imposed by insurance companies be "no more restrictive" than those imposed for medical and surgical benefits. In this case, the plaintiffs, which included the American Psychiatric Association (APA), Connecticut Psychiatric Society (CPS), and Connecticut Council on Child and Adolescent Psychiatry (CCCAP), as well as two individual psychiatrists, alleged that the defendants had violated the MHPAEA because they "reimburse psychiatrists less than they reimburse non-psychiatric physicians," and "impose onerous administrative requirements on psychiatrists" (*Am Psychiatric Ass'n. v. Anthem Health Plans*, 50 F. Supp. 3d 157 (D. Conn. 2014), p 160). The defendants included Anthem Health Plans, Inc., Anthem Insurance Companies, Inc., Wellpoint, Inc., and Wellpoint Companies, Inc.

The district court found that the individual psychiatrists lacked a cause of action under the statute and the associations lacked constitutional standing to pursue their claims. The plaintiffs appealed this decision, citing two recent cases in which the court had sided with psychiatric associations that brought suit against health insurance companies based on similar claims: *New York State Psychiatric Association, Inc. v. UnitedHealth Group*, 798 F.3d 125 (2d Cir. 2015) and *Pennsylvania Psychiatric Society v. Green Spring Health Services, Inc.*, 280 F.3d 278 (3d Cir. 2002). In petitioning for reversal of the district court's decision, the plaintiffs argued that their patients represent a vulnerable population and that as physicians they should be able to raise the statutory rights of their patients.

Ruling and Reasoning

In the ruling, Judge Walker (joined by Judge Raggi) delivered the opinion of the court, affirming the decision of the district court that the psychiatrists lack a statutory cause of action and the associations lack constitutional standing to bring civil action against the health insurers. The court noted that, although physicians and other professionals are able to raise the constitutional rights of their patients, in this case, the psychiatrists attempted to raise solely the statutory rights of their patients. Citing *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377 (2014), the 2nd Circuit Court of Appeals concluded that the court "cannot expand the congressionally-created statutory list of those who may bring a cause of action by imposing third-party prudential considerations" (*Am. Psychiatriac Ass'n*, p. 360). It went on to conclude that because the associations were suing on behalf of their members, they must demonstrate that their members would have standing to sue in their own right. Thus, because the members were determined to lack standing, so do the associations.

Discussion

Congress first addressed the question of mental health parity in 1996, when it signed into law the Mental Health Parity Act. Before this time, health

insurance companies had no obligation to cover mental health or addiction treatment, and it had been widely noted that access to these services was limited. However, after its enactment, many insurers began finding ways to circumvent this legislation, which resulted in patients continuing to have difficulty obtaining these services. Some of the tactics used by insurers involved requiring higher copays and deductibles, as well as decreased lifetime limits on coverage. Acknowledging that this act was not having the desired effect, in 2008, Congress enacted further legislation to help close some of the loopholes left by the original act. The goal of the MHPAEA was to apply more specific requirements aimed at ensuring adequate mental health and addiction coverage. However, despite these additional requirements, as noted by *APA*, health insurers have continued to reimburse mental health care at rates lower than that of medical and surgical care, and to require additional administrative tasks, such as prior authorizations for certain prescribed medications. Based on this disparity in coverage, it has been alleged that health insurers have selectively discriminated against patients with mental illness and addictions.

In this case, the individual psychiatrists and associations argued that their patients, by virtue of their illnesses, are a vulnerable population and thus may require a third party to help represent them in court. The psychiatrists contend that based on their role as physicians who are responsible for the care of their patients, as well as knowledgeable around their health needs, they are in the best position to raise such interests. In fact, in *Griswold v. Connecticut*, 381 U.S. 479 (1965), the U.S. Supreme Court concluded that physicians could raise the constitutional rights of their patients. In the current case, the court acknowledged this precedent, but went on to conclude that because the rights being raised were specific to the insurance companies' breach of the MHPAEA, these rights are strictly statutory. Thus, the plaintiffs must possess a cause of action under the statute as defined by the Employee Retirement Income Security Act of 1974 (ERISA) § 502(a).

In light of these findings, two similar cases that were cited by the plaintiffs (*New York State Psychiatric Association, Inc.* and *Pennsylvania Psychiatric Society*) are relevant to this discussion. In *New York State Psychiatric Association, Inc.*, the same court of appeals held that health insurers could be held liable under ERISA § 502(a) for violations of MHPAEA. The court in *American Psychiatric Ass'n* acknowledged this previous finding, but went on to clarify that in the case of *New York State Psychiatric Association, Inc.*, the psychiatrists sued as assignees for patient benefits, rather than on behalf of the patients, and thus they were concluded to have standing to sue "in their own right." The court also addressed the findings in *Pennsylvania Psychiatric Society*, contending that, although the district court in that case concluded that the psychiatric association possessed a cause of action, its decision was based on state law contract and tort claims rather than ERISA. It went on to rule that the question of whether the plaintiffs had a cause of action under the statute was never specifically addressed by the Third Circuit. Despite the court's explanation in *American Psychiatric Ass'n* for why the psychiatrists lacked standing and the differences between it and *New York State Psychiatric Association, Inc.* and *Pennsylvania Psychiatric Society*, the current ruling appears to be at odds with these other rulings that found that psychiatrists possessed a cause of action against insurers.

In addition, given the assumption that persons with mental illness and addictions represent a vulnerable population and are frequently unable to raise their rights effectively in court, this case elicits the question of how individuals and associations can best assist in this process. The court's strict interpretation of who possesses a cause of action under ERISA suggests that psychiatrists would be able to bring suit only on behalf of their own losses, rather than acting as fiduciaries on behalf of their patients. Although such an interpretation may be understandable and the psychiatrists in this case did in fact have a financial interest at stake, such a ruling does nothing to answer the question of how to help patients obtain reasonable mental health benefits. In light of this case, it will be interesting to see what alternative strategies are used in future efforts to achieve compliance with MHPAEA.

Disclosures of financial or other potential conflicts of interest: None.