

New Mental Health Push Could Create Insurance Mandates

By **Rachel Slajda**

Law360, New York (January 30, 2013, 7:39 PM ET) -- New political momentum to improve access to mental health care, spurred by the recent school shooting in Newtown, Conn., will push regulators to tighten rules for employers offering mental health coverage and give lawmakers new leverage to force all health insurance plans to offer mental health benefits, experts say.

One thing that is likely to happen is final regulations implementing the Mental Health Parity and Addiction Equity Act of 2008, which requires large group health plans that cover mental health services to do so at the same level that they cover medical and surgical services, with no higher restrictions, copays or limitations. Since the Newtown shooting, President Barack Obama has vowed to pass final regulations implementing the law, which has had implementation problems even with interim final rules in place, due to some fundamental questions that remain unanswered.

But the renewed focus by Obama and Congress could lead to further actions to expand mental health coverage. One clear area would be to extend the parity act to mandate that all health plans offer mental health coverage, something the law does not currently do.

"The natural next step, or the natural extension of mental health parity, would be to require all policies to provide at least a minimum level of mental health coverage," said James Napoli, senior counsel in the employee benefits practice at Proskauer Rose LLP. "I think that's something we should all keep an eye on."

When the Affordable Care Act fully goes into effect in 2014, individual and small group plans on the insurance exchanges will be required to offer mental health coverage as part of their essential health benefits package. But the employer-sponsored, large group plans subject to the Mental Health Parity Act will not see such requirements.

Insurers and employers generally oppose such hard-and-fast mandates, which can add major costs to their operations.

"Every mandate that's added to employer-provided coverage obviously increases the cost of that coverage," said Andy Anderson, a partner in the employee benefits practice at Morgan Lewis & Bockius LLP. "The mental health parity rules have always straddled the line, saying, 'You don't have to, but if you do, here's how they have to function.' It's a little bit easier for employers to deal with than an absolute, out-and-out mandate."

The parity act, for example, allows health plans some leeway to exclude coverage for very expensive services, such as inpatient mental health or substance abuse treatment. Anderson said he would be watching the debate closely to see if Congress moves closer to a mandate.

"The biggest [concern] of all is taking the existing mental health parity rules and turning them into the mental health mandate that applies across all plans," he said. "I would think that would be [advocates'] ultimate objective."

Anderson also said he took issue with the idea that the law had not been implemented, saying employers like his clients had been taking the interim final rules seriously since they were issued in 2010.

But although interim final rules are usually treated the same as permanent final rules, others say that there are still major questions that need to be answered via rulemaking. Mental health care advocates say they are focused on getting the parity act questions resolved before taking any further steps.

One area experts say needs clarity is fundamental: What, exactly, does "parity" mean, and what is the scope of services that comes under the parity rules?

"We've seen examples of insurance companies eliminating whole categories of mental health benefits. That seems like it might go against the spirit of the law, but the interim final rule doesn't offer any guidance on scope of services," said Rebecca Farley, the director of policy and advocacy for the National Council for Behavioral Health. She said her group would like further regulations to address what it means to provide a full range of mental health services.

The rules don't offer enough detail about how to define a mental health service or how to apply similar coverage options for mental health services that don't have an analogue on the medical side, such as intensive outpatient treatment.

"That's really it. What does parity mean? When you're measuring it against other coverages, what other coverages are we looking at?" Napoli said. "What we're doing is looking at current coverages offered by an employer-sponsored plan and determining which coverages are more medical and which are mental health. The next step is to determine whether there's parity. ... It sounds pretty easy, but it can be a little tricky because not everything fits neatly into a category of mental health or medical."

Farley said two other big issues are what sorts of treatment limitations health plans can apply to mental health services, such as medical-necessity requirements and fail-first policies, and how the parity act will apply to Medicaid managed care plans, which states are increasingly shifting toward.

"A lot of work remains to be done. It's too early to tell how this will all roll out," she said. "That's why final regulations are the first step."

--Editing by Elizabeth Bowen and Katherine Rautenberg.