

Health Law & Business News

Covid-19 Called Poor Excuse for Delaying Mental Health Suits

By Lydia Wheeler

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- Judge revokes delay in mental health case
 - Pandemic shouldn't delay some cases, attorneys say
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Attorneys for patients and providers suing insurers over coverage of mental health and substance abuse treatment say the coronavirus pandemic is no longer a valid excuse to hold up litigation.

Some health insurers accused of failing to pay claims or using overly restrictive guidelines to deny benefits have cited Covid-19 in pushing for continued delays. But attorneys on the other side say their patients need court orders to stop what is persistent bad behavior by insurers, especially in the midst of a global pandemic that's weighing on the mental health of Americans.

"I've had a lot of insurance companies trying to put the brakes indefinitely on cases using the ubiquitous 'Covid' excuse," said Matt Lavin, a partner at Napoli Shkolnik PLLC who almost exclusively represents behavioral health patients and providers.

New Normal

In every single case he has pending, without exception, Lavin said insurance company lawyers have used the pandemic to delay and indefinitely pause litigation related to mental health treatment. Attorneys say this doesn't bode well for the future coverage of behavioral health care, even as more claims for coverage are expected.

"We were already in one mental health epidemic and now we're deep in the middle of another one," he said.

"We've got dual mental health crises where people don't have access to care and insurance companies are saying essentially, 'We don't care at all about the patients or them getting treatment. We're just too busy to take a look at changing our guidelines.' I think it's unconscionable."

A California Superior Court judge agreed earlier this month to delay a trial till March 8, 2021, in a case two California-based behavioral health providers brought against United Behavioral Health after the insurer cited the pandemic as one of three reasons why the trial shouldn't be held on Dec. 7, 2020.

The pandemic “has impacted and will continue to impact the progress of discovery, including United’s ability to gather relevant information,” the insurer’s attorneys said in a court filing.

Lavin, who is representing the providers in the case over nonpayment, pushed back. “During these extraordinary times, all attorneys and clients have a heightened responsibility to this court and the legal system to move cases along,” he said in a response.

United Behavioral Health is accused of failing to make proper payments totaling \$7.05 million for behavioral health services. In a statement, UnitedHealthcare said the claims against United are for services provided between 2015 and 2017. United Behavioral Health is responsible for authorizing treatment and the payment of claims related to behavioral health services covered under health plans sponsored or administered by UnitedHealth Group.

“The court made the decision to extend the trial date by 90 days, from December 2020 to March 2021, after reviewing filings by both parties and conducting a hearing,” Maria Gordon Shydlo, a UnitedHealthcare spokesperson, said.

Unprecedented Times

Recent studies have shown that more people may need mental health and substance abuse treatment as a result of the pandemic. A Kaiser Family Foundation poll released April 21 found that worry and stress over the virus has negatively affected the mental health of nearly half— 45%—of adults in the U.S.

UnitedHealthcare said it’s committed to ensuring members have ready access to clinically effective mental health and substance use disorder treatment and support when they need it, as part of a broad commitment to accessible, quality care.

“In addition to supporting individuals so they may access mental health services under their current plan benefits, UnitedHealthcare has expanded coverage to help support individuals in need of mental health support during these unprecedented times,” Gordon Shydlo said.

Attorneys in cases challenging the guidelines insurers use to approve or deny treatment say they need their cases to move forward to hopefully win orders that stop insurers from restricting coverage.

“When they experience a restriction in the coverage that’s available to them in effect it makes the care less accessible,” said Caroline Reynolds, a partner at Zuckerman Spaeder LLP, who represents patients and providers.

A recent decision from a federal judge, however, could signal coronavirus may be losing its potency when it comes to justifying delays in some instances.

A federal district court judge in the Northern District of Illinois agreed May 13 to shorten an extension he had provided because of the pandemic in a case against Health Care Service Corp. after attorneys argued “lawyers nationwide have now adapted to working from home.”

Health Care Services Corp. is facing a potential class action that accuses it of violating its fiduciary duties under the Employee Retirement Income Security Act by using restrictive guidelines to deny coverage of residential treatment for mental health conditions and/or substance use disorders.

The court-ordered extensions were holding up certain briefs the insurance company must file under local rules before a case can proceed to discovery, said Reynolds, who's representing the patient who brought the litigation.

Health Care Service Corp. said it does not comment on matters where there is pending litigation. The insurer's attorneys did not respond to a request for comment.

"When we were doing this back in March and April, people were dealing with the unknowns of stay-at-home orders and courts were more willing to say, 'Let's delay things just to see how it all shakes out,' but now I get the impression that people have adjusted to the new normal in a sense that they've figured out how to work effectively remotely," said Brian King, sole owner of Brian S. King PC in Utah, who represents patients in a number of lawsuits against insurers for allegedly failing to pay for residential mental health, behavioral health, and substance abuse treatment.

King is also a Democratic representative in the Utah Legislature.

"I don't think you're going to see Covid serving as a reason to delay things today in the same way you saw it 60 days ago, serving as a basis to ask for extensions or see extensions," he said.

Benefit of the Doubt

Some mental health advocates say that, in general, courts have tried their best to continue to move cases along.

"While 'justice delayed' can become 'justice denied,' it is challenging for all concerned to conduct litigation during the pandemic," Ira Burnim, legal director of the Bazelon Center for Mental Health Law, said in a statement. "Courts must balance attention to their criminal dockets with attention to their civil dockets, and consider when necessary whether and how to prioritize cases."

Plaintiffs' attorneys say extensions and delays are par for the course in civil litigation and they try to give defense counsel the benefit of the doubt, but they are hearing insurers use Covid-19 as a reason for delays.

"We're trying to work as cooperatively as we can with opposing counsel to accommodate reasonably, while also trying to push the cases forward because we really do need to get them to be decided eventually," Reynolds said.

"From our perspective, these cases, especially the ones that concern the criteria that are being used to decide whether people get coverage for their treatment, can be a matter of life and death for people."

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