

S.5329/A.8301

S. Libous/M. of A. Tonko

Purpose of Bill: To amend Sections 3216, 3221, 4303, 4320, and 4322 of the Insurance Law to ensure that mental health and chemical dependency coverage is provided by insurers and health maintenance organizations on the same terms as other health care and medical services.

**THIS BILL IS APPROVED**

Discussion: This report is being submitted on behalf of the Committee on Mental Health Law of the Association of the Bar of the City of New York to urge enactment of S.5329/A.8301 (“Timothy’s Law”)<sup>1</sup> this legislative session. This bill would end the dramatic disparity that exists between the coverage of mental health conditions and other health conditions. Currently in New York, the typical insurance plan covers significantly fewer days in a hospital, has lower caps on outpatient doctor visits, and has higher deductibles and co-payments for treatment of mental illness than for treatment of physical illness. Some policies also limit access to therapy or medication through preauthorization requirements that are poorly administered or arbitrary.

The passage of Timothy’s Law is of great importance to the Committee.<sup>2</sup> On December 11, 2003, the Committee on Mental Health Law sponsored a symposium on mental health parity legislation (the “Parity Symposium”) to further educate members of the Bar and the public.<sup>3</sup> Some of the comments made in this report originate from statements made at the Parity Symposium.

Insurers distinguish between “mental” and “physical” illness for purposes of health coverage despite much evidence of the role that physical causation plays in many symptoms of mental illness. Due largely to this distinction which insurers employ, much mental illness continues untreated, resulting in high costs to society,<sup>5</sup> and in particular businesses. Unfortunately, segments of the business community that oppose the law incorrectly believe that the cost of insuring mental illness is more expensive than its true cost. These opponents also do not understand that the financial cost of not covering mental illness significantly harms employee productivity and drives up the total cost of doing business.

Long-term mental illness is one of the three leading causes of disability.<sup>6</sup> Disability caused by mental illness may manifest itself in a number of ways, including increased physical health care costs,<sup>7</sup> absenteeism, and reduced productivity. Depression, a specific type of mental

illness, will affect sixteen percent of Americans sometime in their lives severely enough to require mental health treatment.<sup>8</sup> Depression costs employers \$44 billion a year in lost productive time.<sup>9</sup>

There is ample evidence that proper mental health treatment is not only therapeutically effective (80 percent for major depression),<sup>10</sup> but cost-effective as well. A number of corporations provide comprehensive mental health benefits because the costs of providing them outweigh the costs of untreated mental health illness in the workplace.<sup>11</sup> When a large financial services company increased its mental health benefits, its mental health costs fell over a twelve-year period from 15 percent to 6 percent of total health costs.<sup>12</sup> When a large mining company provided mental health counseling for employees, its hospital, medical, and surgical costs decreased 48.9 percent.<sup>13</sup> Conversely, after a large Connecticut corporation reduced its mental health coverage by 30 percent, employees who had previously used services available through the corporation's mental health insurance coverage increased their use of physical health benefits by 37 percent and increased their use of sick leave by 22 percent.<sup>14</sup>

The success of these companies in expanding mental health benefits is further exemplified by the experiences of Delta Airlines. In May 2000, Tara Wooldridge, Manager of Delta Airlines' Employee Assistance Program, testified before the United States Senate's Committee on Health, Education, Labor and Pensions as to the company's cost savings after implementing mental health and substance abuse benefits without annual or lifetime limits. Ms. Wooldridge credited the savings in large part to the company's use of appropriate behavioral care management consisting of identifying and treating mental illness at its outset and providing an appropriate continuum of care.

Despite assertions by the opponents of parity that enacting Timothy's Law would lead to soaring costs, thereby resulting in fewer people being able to afford insurance, that has not been the result in states which have implemented comprehensive parity. The State of Maryland reported a 0.2 percent decrease in plan costs after the implementation of a parity law.<sup>15</sup> In Vermont, Blue Cross Blue Shield of Vermont, one of the state's primary commercial health care insurers, reported that spending increased by only 4 percent, or \$.19 per member per month.<sup>16</sup> Further, after California enacted a limited parity law, there was no evidence that employers dropped health care coverage as some had feared.<sup>17</sup> Magellan Health Services, the nation's largest managed behavioral health organization, reported that their premiums increased between .2% and .8% following implementation of state mental health parity requirements.<sup>18</sup>

Opponents of Timothy's Law have argued that: (1) that New York should have a process, possibly in the form of a commission, to determine the cost-benefit analysis of mental health parity; and (2) implementing better mental health services would result in employers dropping insurance altogether.

With regard to the first point, many studies already exist concerning the costs of implementing parity in other states, as set forth above. Furthermore, based upon its actuarial analysis on the enactment of comprehensive parity in New York State, PriceWaterhouseCoopers LLC ("PwC") concluded in May of 2002 that employers' costs will increase \$1.26 per insured

person per month.<sup>19</sup> With this evidence, there is no need to perform more studies. To do so will further delay of the passage of Timothy's Law, and result in the continued suffering of people who are unable to access adequate mental health treatment.

The Committee is also not persuaded by parity opponents' claim that employers would drop health benefits if Timothy's Law were passed. An April 2002 Zogby International poll of likely voters in New York State found that 81% of those polled were willing to pay the additional cost of \$1.26 per month as identified by PwC for equal coverage.<sup>20</sup> According to the poll, every region of New York State, and every identified political affiliation, age group, ethnicity, and religion wants an end to the discriminatory practice by a wide margin.<sup>21</sup>

Having studied the various points made for and against insurance parity for coverage of mental illness, the Committee summarizes the principal reasons for its support of Timothy's Law as follows: 1) current limitations on insurance coverage in New York discriminate against the mentally ill because they provide significantly less coverage for mental illness than for other health conditions; 2) the suffering of New Yorkers with untreated mental illness is largely caused by discriminatory insurance policies that restrict access to proper mental health care; 3) business will benefit from mental health parity because it will result in increased employee productivity. The Committee finds all three reasons to be persuasive evidence for the need to adopt Timothy's Law.

The conclusions of this report are to be added to the voices of the hundreds of advocates from across the State who gathered in Albany on March 16, 2004, and the thousands more who have called upon their elected officials to end this invidious discrimination. Tragically, Timothy O'Clair's family is not alone in New York in losing a loved one to suicide caused by untreated mental illness. Today there are thousands of people in New York State who live with extreme suffering caused by untreated mental illness. The passage of this bill will save lives, restore dreams, and allow mentally ill New Yorkers to be positive contributors to society and the State's economy.

Therefore, we respectfully urge the passage of S.5329/A.8301.

Respectfully Submitted,

Katharine A. Clemens, Esq.  
Chair, Committee on Mental Health Law

## **The Mental Health Law Committee**

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Peter N. Yoerg\*

Nancy J. Pepe

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\* Drafters of the Report

The Committee adopted the Report (unanimously).

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1 Timothy's Law is named after Timothy O'Clair, a 12-year-old boy who committed suicide after his parents exhausted their mental health insurance coverage and were forced to relinquish custody of him to gain access to hospitalization.

2 The Committee consists of attorneys who practice in a variety of areas of the law in government and public interest organizations as well as in private practice. The Committee includes experienced practitioners in the field of mental health law. Some of the members have family members who are mentally ill.

3 The panel was moderated by Michael Friedman, C.S.W., Director of the Center for Policy and Advocacy of the Mental Health Associations of New York City and Westchester. Mr. Friedman

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teaches courses on health policy and social advocacy at Columbia University School of Social Work and mental health policy at NYU's Wagner School of Public Service, and has a mental health-related career spanning 35 years. The panelists were:

Spencer Eth, M.D., Professor and Vice Chairman, Department of Psychiatry, New York Medical College, and Senior Vice President and Medical Director, Behavioral Health Services, St. Vincent Catholic Medical Centers of New York. Board-certified in psychiatry, child psychiatry, geriatric psychiatry, addiction psychiatry and forensic psychiatry, Dr. Eth has authored over one hundred publications and received numerous awards.

Charlotte Moses Fischman, Esq., Partner, Kramer, Levin, Naftalis & Frankel, LLP, and current President of NAMI (National Alliance for the Mentally Ill) – New York City Metro Chapter. Ms. Fischman has long been an active member of this Association, serving on the Executive Committee, the Judiciary Committee, and the Committee on Professional and Judicial Ethics. Her interest in mental health dates from 1996 when her daughter became ill.

Paul F. Macielak, Esq., President and CEO, New York Health Plan Association, and Vice Chairman of the New York State Hospital Review and Planning Council (SHRPC). Mr. Macielak has served as Counsel to the Majority Leader of the New York State Senate and Chief Counsel to the Assembly Minority Leader.

Evelyn Roberts, Ph.D., Executive Director, NAMI – New York City Metro Chapter, and director of NAMI – New York City Metro's Mental Health Benefits Project. Ms. Roberts also serves on the External Advisory Committee for the New York City Division of Mental Hygiene's quality improvement initiative, Quality IMPACT.

Dr. Eth, Ms. Fischman and Ms. Roberts spoke in favor of Timothy's Law, and Mr. Macielak spoke against the legislation. Mr. Friedman also summarized in favor of the legislation.

4 See <http://www.news.uiuc.edu/scitips/03/0217fragxaaas.html>.

5 See, generally, NATIONAL MENTAL HEALTH ADVISORY COUNCIL, *Health Care Reform for Americans with Severe Mental Illnesses; Report of the National Mental Health Advisory Council*, 150 AM J PSYCHIATRY 1447.

6 See Gabriel P. and Liimatainen M., ILO, *MENTAL HEALTH IN THE WORKPLACE* (2000).

7 See, e.g., Mark Olfson et al., *Mental Health/Medical Care Cost Offsets; Opportunities for Managed Care*, 18 HEALTH AFF. 79, 82-86 (1999); Mary Jane England, *Perspectives: Capturing Mental Health Cost Offsets*, 18 HEALTH AFF. 91, 91-93 (1999); Brian J. Cuffel, et al., *Does Managing Behavioral Health Care Services Increase the Cost of Providing Medical Care*, 26 J. BEHAV. HEALTH SERVICES & RES. 372.

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8 See Ronald C. Kessler et al., *The Epidemiology of Major Depressive Disorder; Results From the National Co-Morbidity Study Replication, Sponsored by the NIH*, 289 JAMA 3095, 3099 (2003).

9 See Walter F. Stewart, et al., *Cost of Lost Productive Work Time Among US Workers With Depression*, 289 JAMA 3135 (2003).

10 See N.Y.C. DEPT. OF HEALTH AND MENTAL HYG.,  
<http://www.nyc.gov/html/doh/html/special/depress.html>;

YALE U. DEPT. OF PSYCHIATRY, <http://info.med.yale.edu/psych/clinics/affectdiss.html>;

U. OF MD., <http://www.health.umd.edu/fsap/depression.html>.

11 Evelyn Roberts, Parity Symposium.

12 See United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, National Mental Health Information Center: Center for Mental Health. <http://www.mentalhealth.org/publications/allpubs/SMA01-3481ch8.asp>

13 See GWCMHPC, Inc., *Good Mental Health Coverage Brings Big Returns to the Workplace*, Marland: Greater Washington Coalition of Mental Health Professionals & Consumers, Inc. and the Washington School of Psychiatry.

14 See Robert A. Rosenheck et al., *Effect of Declining Mental Health Service Use On Employees of a Large Corporation: General Health Costs and Sick Days Went Up when Mental Health Spending Was Cut Back at One Large Self-Insured Company*, 18 HEALTH AFF. 193, 198 (1999); see also David S. Salkever et al., *Disability Management, Employee Health and Fringe Benefits, and Long-Term Disability Claims for Mental Disorders: An Empirical Exploration*, THE MILBANK Q., 78(1), 79-113 (2000).

15 See GABRIEL P. AND LIIMATAINEN M., ILO, MENTAL HEALTH IN THE WORKPLACE (2000).

16 See SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION'S CENTER FOR MENTAL HEALTH SERVICES, EFFECTS OF THE VERMONT PARITY LAW(2003).

17 See MATHEMETICA POLICY RESEARCH, INC., A SNAPSHOT OF THE IMPLEMENTATION OF CALIFORNIA'S MENTAL HEALTH PARITY LAW 20 (Feb. 20, 2002).

18 See Statement of Henry Harbin, Chairman of the Board of Magellan Health Services on Behalf of the American Managed Behavioral Health Care Association and Magellan Health Services at a hearing of the Comm. of Education and the Work Force Subcomm. on Employer-Employee Relations on Accessing Mental Health Parity: Implications for Patients and Employers, Washington, DC (March 13, 2002).

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19 See Ronald E. Bachman, *Mental Health Parity: "Just the Facts" -- Actual Data and Experience Reports*, Address at the American Psychological Association 2000 State Leadership Conference.

20 Zogby International is a polling and market research firm.

21 See THE MENTAL HEALTH ASSOCIATION IN NEW YORK STATE, INC., <http://www.mhanys.org/press/pr020509.html>