

# MICHIGAN Lawyers Weekly

## A sidebar with... J.J. Conway

By: CORY LINSNER in News Stories March 9, 2022

A growing need within the state's health insurance coverage system is mental health services. Hefty medical bills add to the financial woes some families face due to specialized teen mental health services not being fully covered by health insurance plans.

J.J. Conway Law is looking to combat that.



Conway, founder of J.J. Conway Law in Royal Oak and a nationally recognized employee benefits and ERISA attorney, was involved in landmark litigation granting previously denied insurance coverage for specialized health services for children with autism. Now, he is working with families to help them obtain coverage or reimbursement for medical expenses for teens who need extended mental health treatment for conditions including eating disorders, self-harming behaviors and substance abuse.

Conway shared with Michigan Lawyers Weekly how he took up the cause and ways in which attorneys can help their clients facing similar struggles.

### How did you get involved with advocating for teens with mental health

#### issues?

Benefits law is a unique area, especially when working with employees and their families. The issues that arise tend to trend nationally, so you don't see one case or two cases — you see dozens of the same types of cases all at once.

I first became aware of this trendline issue when insurance companies were denying proper healthcare for children with autism. For the past several years, I have worked with families on inpatient residential treatment cases, and these cases are deeply moving. The fact that families are willing to share their stories with me and effectively "invite me into their homes" is a something I view a sacred trust.

I also have seen so much unfairness in these claim denials that I am troubled by the approach of many health insurers with respect to these claims that I want to put a stop to it, on a personal level.

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### What should employers be mindful of when it comes to mental health coverage for teens?

The December 2021 U.S. Surgeon General's Report made clear what many already knew — the health crisis of the last two years has taken a particular toll on the mental health of teenagers. The statistical data about self-harming behaviors is extremely troubling, particularly among teenage girls. Employers should understand that this is a real issue — and it could be affecting employees outside of their workplace.

One of the best ways to help is to be understanding of how this type of crisis in a home can affect work

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As a legal issue on the horizon, private sector employers who serve as fiduciaries for their benefit plans may want to study the market and evaluate which insurers have been repeatedly having problems in this area. If an employer is selecting a health insurer with a bad record in this area, it could lead to litigation and regulatory problems for that employer.

### **What should attorneys be aware of with the coming emphasis on the U.S. Department of Labor's emphasis on enforcing certain protections under the Mental Health Parity and Equity Addiction Act?**

There is now a greater understanding of the magnitude of the mental health problem afflicting teenagers and a more favorable climate for parents seeking to enforce their insurance contracts and secure reimbursement for costly care, including inpatient residential treatment. This more favorable climate is both regulatory and judicial. A claim denial alleging that a teen's mental health treatment is "not medically necessary" should be scrutinized. The U.S. Department of Labor is focused on this issue and is going to be more aggressive in terms of enforcement against insurance companies and large benefit plans that are restricting access to proper mental healthcare.

### **What does this new regulatory environment mean for employees?**

In this case, the employee is likely the parent or guardian of a teen needing proper mental health treatment. The employee should not simply accept a claim denial but should request access to all the supporting documentation behind the decision. An employee has a right to this information under statute and a series of a healthcare and benefit plan regulations. If a claim denial of an expensive treatment claim does not make sense, the employee should consider all the available legal options which can include internal claims appeals or litigation.

### **How would you advise families whose claims for expensive mental health treatments have been denied?**

Although it is said so much and so often, the key to achieving relief in these cases is to bring in, early on, counsel that understands ERISA benefits cases and mental health parity issues. A healthcare claim arising under a benefit plan is a complex issue with multiple regulations and laws all intersecting. A family should consult counsel on this as early as possible — even when seeking preauthorization for mental healthcare treatment.

### **What next steps can be taken?**

Change comes when the price of denying valid claims becomes too high. Families are showing real courage and bringing into the public view cases which were previously private matters. Every client we've ever had with this type of case has offered to help other clients or families.

Eventually, this tendency toward aggressive claim denial will change — if not through mass litigation, then through new laws. This is a nonpartisan issue. Mental health and substance abuse issues affect all families regardless of their backgrounds or socioeconomic status or how they vote.

My sense is that if the industry does not change, the industry will have change forced upon it.

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