

# Managed Care Litigation Update®

## NEWSWORTHY

District Court grants, in part, motion to dismiss claims of neurosurgery practice pertaining to 145 different plans where plaintiff alleges Aetna failed to pay or underpaid 200 claims between 2012 and 2016. The Court granted the motion as applied to the “110 claims implicating valid anti-assignment clauses” and as to “72 claims, due to the failure to exhaust administrative appeals and because their state law causes of action are preempted by ERISA.” *Neurological Surgery, P.C. v. Aetna Health, Inc., et al.*, USDC EDNY, No. 2:19-cv-4817-DRH-ARL, (Doc. 27, filed Jan. 4, 2021).

District Court dismisses suit by MA plans against St. Jude alleging a right of action under the Medicare charge rule and private right of action associated with allegedly defective defibrillators. “[B]efore Humana can seek reimbursement under the Medicare laws, it must first prove under some other law that St. Jude is liable for the surgeries.” *Humana, Inc. v. St. Jude Medical, LLC*, USDC D DE, No. 1:20-cv-1032-SB, (Doc. 20, filed Dec. 10, 2020), (NOA filed).

District Court denies certification of putative class containing 84 ERISA plans where plaintiffs sought to challenge a common offset provision contained in certain Blue Cross plan documents. The provision states “Payments made in error or overpayments may be recovered by the Claims Administrator as provided by law.” *J.P., et al. v. BCBSM, Inc., et al.*, USDC D MN, No. 0:18-cv-3472-MJD-DTS, (Doc. 103, filed Jan. 14, 2021).

## RECENTLY FILED ACTIONS

Removed action in which hospital and associated practitioner group seek \$9.5 million in benefits where the dispute is whether the United Welfare Fund is a beneficiary of the network agreement between [ ] and the hospital.

Removed action in which plastic surgeon seeks benefits and allege underpayments associated with five surgeries to treat “Lynch Syndrome and associated increased risk of breast cancer.” Provider was part of a shared savings network, which allegedly provides for a 7% discount on billed charges. Total billed charges were \$442,193 and total reimbursement was \$21,971.66.

Group of members sue BCBS entities and ERISA plans asserting the wrongful approval of “unnecessary, fraudulent, and experimental spine surgery performed by [provider].” Plaintiffs allege the in-network surgeon “regularly used PureGen wrongfully and unlawfully, which is NON-FDA APPROVED and experimental in most surgical applications.”

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## RECENTLY FILED ACTIONS

Self-funded ERISA plan seeks \$82,528.80 in subrogation following member's personal injury recovery for auto accident claim.

*Pro se* member seeks benefits and damages associated with wheelchair for paraplegic member of Medicaid plan. Replacement wheelchair "came without a Roho seat cushion" and "[t]his has caused severe joint pain and skin breakdown."

[ ] seeks \$6,406,792.13 in alleged overpayments associated with unsubstantiated billing of S9328 with regard to Home Infusion Therapy. Following an investigation, [ ] concluded that defendant was billing for ongoing services but allowing other [ ] providers to oversee administration of the drug and otherwise manage the patient's care.

Removed action in which OON provider seeks \$79,252.34 in ERISA benefits associated with auto accident injuries culminating in surgeries to the member's right and left knees. The basis of the denials is not stated in the underlying complaint.

Removed action in which member seeks ERISA benefits associated with certain treatment following a moving vehicle accident that was denied as medically unnecessary, particularly "formal therapy for the pain in her spine through [ ]."

Removed action in which residential substance use disorder treatment center seeks over \$800,000 in benefits and alleges failure to properly pay claims. "Defendants have underpaid the claim, not paid the claim, or directly paid the Member the claim payment."

Member seeks ERISA benefits from self-funded plan for Proton Beam Radiation Treatment ("PBRT") for prostate cancer. The claim was denied as experimental or investigational pursuant to the "Clinical Policy Bulletin (CPB): Proton Beam and Neutron Beam Radiotherapy."

Removed action in which OON emergency care physicians seek benefits associated with treatment of six members. Total billed charges were \$353,500 and the amount paid was \$102,080.80. Other actions by this provider reported in ***MCLU Vol. 163, 167.***

Hospital and alleged assignee seeks ERISA benefits associated with treatment of member. Billed charges were \$20,216.70 and the amount reimbursed was \$374.01. Basis of payment is not stated in the complaint. Other actions by this provider reported in ***multiple MCLU issues.***

## ADDITIONAL NEWSWORTHY (REGULATORY)

Ohio legislature enacts arbitration scheme pertaining to disputed reimbursement rates for OON emergency services, including provision requiring the losing party to pay 70% of the arbitrator's fees. The scheme will be codified at ORC 3902.50 through 3902.54. 2020 Am. Sub. H.B. 388 (approved Jan. 7, 2021).

## MCLU is online and searchable.

The underlying database to this publication, containing approximately 2,700 federal cases reported in this publication, is online. The Case Description field is word searchable. Searches can also be performed by Payer, Date Range, District Court and/or Court of Appeal, citation, or Judge. Past issues are available for immediate download.

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CIGNA	Cigna Health and Life Insurance Company	Cara Z	2016-3-7	S.D. FL	Eleventh	52	Cara Z v. CIGNA Health and Life Insurance Company, U.S.D.C. S.D. FL, Doc. No. 1:16-cv-20849-DPG, (f...	Minor child seeks recovery of mental health benefits associated with residential treatment at Olive...	Darrin P. Gayles					
BCBS	Excellus Blue Cross Blue Shield	Kirby L.	2016-10-3	N.D. NY	Second	66	Kirby L. v. Excellus Health Plan, Inc., et al., U.S.D.C. N.D. NY, Doc. No. 3:16-cv-01195-DNH-DEP, (f...	Plaintiff, who suffers from an eating disorder, depression, and anxiety, seeks recovery of mental h...	David N. Hund					
UNITED	United Healthgroup, Inc.	Jamie Bushell	2017-3-19	S.D. NY	Second	77	Jamie Bushell, et al. v. United Healthgroup, Inc., et al., U.S.D.C. S.D. NY, Doc. No. 1:17-cv-02021-...	Putative class action in which plaintiff, who suffers from anorexia nervosa, contends defendants den...	J. Paul Oetken					
CIGNA	Oliver Health and...	GW	2016-4-4	N.D. GA	Third	60	CIGNA Health...	Plaintiff, who...	David...					

## ABOUT THE AUTHOR



**Jonathan M. Herman** is the founding member of [Herman Law Firm](#), which represents health insurers, plan administrators, and self-funded plans in reimbursement disputes and compliance matters. He is also on the Roster of Arbitrators for the American Arbitration Association (Healthcare, Commercial) and a Neutral for the American Health Lawyers Association.

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