

# Managed Care Litigation Update®

## NEWSWORTHY

District Court denies Cigna's motion to enjoin arbitration concerning \$100 million in claims from providers arising out of class action allegations of "denying, delaying, and diminishing" payments owed. *Managed Care Advisory Group, et al. v. Cigna Healthcare*, USDC S.D. FL, No. 1:00-md-1334-FAM, (Doc. 6778, filed Jan. 20, 2021) (NOA filed; Emergency Motion for Stay Pending Appeal denied on Jan. 29, 2021).

District Court dismisses quantum meruit claims of emergency services provider group but finds an implied private right of action under Texas state law to assert improper payment of UCR, creating an intra-circuit split. *ACS Primary Care Physicians Southwest, P.A. v. UnitedHealthcare Insurance Co., et al.*, USDC SD TX, No. 4:20-cv-1282, 2021 WL 235177, (Doc. 58, filed Jan. 22, 2021).

District Court grants motion to dismiss with prejudice putative class action alleging that the denial of a claim for Peripheral Nerve Stimulation ("PNS") device was improper. The claim was denied as experimental or investigational. *Maria Fortier v. Anthem, Inc., et al.*, USDC CD CA, No. 2:20-cv-4952-MCS-MAA, (Doc. 40, filed Dec. 11, 2020).

## RECENTLY FILED ACTIONS

Member seeks ERISA benefits associated with four layers of stitches provided by plastic surgeon immediately following a dog bite. The claim was denied as OON and the plan indicated "there is not a code for emergency" and "you were seen in the office." Plaintiff asserts that she was sent from Urgent Care to the plastic surgeon's office "given the number of COVID patients at the hospital."

Member seeks ERISA benefits from self-funded plan associated with residential inpatient mental health treatment at Red Cliff Ascent and Telos. The Red Cliff claim was denied on the grounds of a Wilderness Program exclusion in the policy, and the Telos claim was denied for failure to meet the [ ] Behavioral Medical Necessity Criteria for Residential Mental Health Treatment for Children and Adolescents. Plaintiff asserts violations of MHPAEA and ERISA.

Member seeks ERISA benefits from self-funded plan associated with residential inpatient mental health treatment at Change Academy Lake of the Ozarks. The claim was denied as not medically necessary based on the [ ] Coverage Determination Guideline for Mental Health Residential and the [ ] Common Criteria and Clinical Best Practices for All Levels of Care Guidelines.

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## RECENTLY FILED ACTIONS

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OON physician seeks \$109,900 in benefits associated with surgeries performed on an emergency basis to member and alleges violations of the Cal. Health and Safety Code sections 1317 and 1317.2, the ACA, and California Insurance Code section 10112.7. Plaintiff alleges [ ] “failed to adequately explain the specific factual and legal basis for the denial.”

Removed action in which OON physician seeks ERISA benefits from self-funded plan and alleges underpayment in violation of Florida usual and customary requirements. The billed charges were \$6,719 and the allowed amount was \$475.61.

Removed action in which OON ambulatory facilities seeks \$3.4 million in alleged underpayments for preauthorized services. Plaintiff alleges “the initial payment amount set by Viant and adopted by the [ ] Defendants is not actually a UCR rate, but rather a lowball opening to ‘negotiations.’”

OON facility seeks approximately \$150,000 in benefits and alleges underpayment associated with preauthorized rehabilitation treatment for acquired brain injury. Plaintiff asserts, “[m]ost claims were simply underpaid and the agreed rates for the services were not honored by [ ].”

Formerly OON facility seeks approximately \$120,000 in benefits and alleges underpayment associated with preauthorized rehabilitation treatment for acquired brain injury of eight members. Plaintiff asserts failure to pay at the agreed Gap Exception rates.

Member seeks ERISA benefits associated with residential inpatient treatment at Legacy Outdoor Adventures. The claim was denied as not medically necessary after applying the American Society of Addiction Medicine criteria.

Member seeks ERISA benefits associated with residential inpatient treatment at Wingate Wilderness and Diamond Ranch Academy. Both claims were denied pursuant to the plan’s wilderness exclusion. Plaintiff asserts violations of MHPAEA.

Member seeks over \$150,000 in ERISA benefits for residential treatment at Kolob Canyon Residential Treatment Center. The claim was denied for lack of medical necessity. Plaintiff asserts a violation of MHPAEA.

OON chiropractor and alleged assignee seeks \$105,563.70 in ERISA benefits and asserts wrongful denials and underpayment associated with treatment of 9 members. Other claims by this provider reported at ***MCLU Vol. 60, 145, 146, 148.***

OON ambulatory surgical center and alleged assignee seeks \$302,439.94 in benefits and alleges underpayment associated with treatment of six members. Plaintiff alleges breach of contract and ERISA violations. Other actions by this provider reported in ***MCLU Vol. 150, 152, 158.***

OON plastic surgeon and alleged assignee seeks ERISA benefits from self-funded plan associated with treatment following motorcycle accident. Plaintiff states 3% of billed charges were paid and that many components of the claims were denied as non-emergent. Another claim filed by this provider reported at **MCLU Vol. 151**.

OON neuropsychiatry laboratory alleges improper denials of its “Core 15 Test” following assurances by [ ] that “everything was set for Genomind to be able to obtain prior authorization, when necessary, and coverage and payment for its Core 15 Test.” Plaintiff asserts “only 12% of Genomind’s Core 15 claims to [ ] had been processed for payment upon initial submission, and only 20% after an appeal had been completed.”

OON orthopedic surgeon seeks ERISA benefits and alleges underpayment associated with arthroscopic surgery. Billed charges were \$15,957 and the allowed amount was \$1,480.89, with \$1,184.71 paid by plan and \$296.18 applied to coinsurance. Other actions by this provider reported in **multiple MCLU Vols.**

OON physician and alleged assignee seeks ERISA benefits and asserts underpayment for surgery to member. Billed charges were \$258,200 and the amount paid was \$38,967.90. Plaintiff asserts the allowed amount should have been 80% of billed charges pursuant to a re-pricing contract. Other actions filed by this provider are reported in **multiple MCLU Vols.**

Member asserts improper denial of claim and improper claims handling by requiring “signing [ ]’s form containing overly broad language, including with respect to HIV / AIDS records.” Member asserts its HIV / AIDS information was allegedly disclosed in violation of state and federal law.

Member seeks over \$400,000 in ERISA benefits from fully-insured plan associated with residential inpatient treatment at Change Academy Lake of the Ozarks. The claim was denied as not medically necessary because “your child could continue care in the Mental Health Outpatient setting.”

ADDITIONAL NEWSWORTHY (REGULATORY)

CMS issues final rule implementing care management requirements applicable to Medicare Advantage SNPs, including requirements for an interdisciplinary care team. The regulations will be codified at 42 C.F.R. § 422.101(f). Medicare and Medicaid Programs; Contract Year 2022 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicaid Program, Medicare Cost Plan Program, and Programs of All-Inclusive Care for the Elderly, 86 FR 5864-01.

## 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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Payer	Defendant	Plaintiff	Date	District Court	Court of Appeal	MCLU Vol#	Case Name and Docket No.	Case Description	Judge
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	Excelsus Blue Cross Blue Shield	Kirby L.	2016-10-3	N.D. NY	Second	66	Kirby L. v. Excelsus Health Plan, Inc., et al., U.S.D.C. N.D. NY, Doc. No. 3:16-cv-01195-DNH-DER, (f...	Plaintiff, who suffers from an eating disorder, depression, and anxiety, seeks recovery of mental h...	David N. Hurd
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

## ABOUT THE AUTHOR

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**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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