

# Managed Care Litigation Update®

## NEWSWORTHY

Eight Circuit affirms dismissal of claims by self-funded ERISA plan against TPA and downstream contractors alleging breach of fiduciary duties and prohibited transactions. Award of defense attorney fees was affirmed on the grounds the district court determined plaintiff's "claims lacked merit from the beginning of the lawsuit [as] the operative agreements and Plan documents ... showed a lack of any evidence of breaches of fiduciary duties or prohibited transactions." *Central Valley Ag Cooperative v. [ ], The Benefit Group, Inc., et al.*, USAC 8<sup>th</sup> Cir., No. 19-3044, 2021 WL 317215, (Doc. 4999657, filed Feb. 1, 2021).

Utah District Court grants plan summary judgment affirming denial of claim for residential treatment on grounds of medical necessity applying the Psychiatric Disorder Treatment – Residential Treatment Center Guideline. The Court applied an arbitrary and capricious standard because the "plain language of ERISA's implementing regulations does not dictate a less deferential standard." *J.L., et al. v. Anthem Blue Cross, et al.*, USDC D. UT, No. 2:18-cv-671-DBB, (Doc. 80, filed Dec. 30, 2020) (NOA filed Jan. 29, 2021).

District Court grants motion to dismiss ERISA claims on grounds that BCBS could not be liable for certain statutory penalties under Section 503 as the group, and not BCBS, was designated as the plan administrator in the plan documents, and that the Fifth Circuit does not recognize *de facto* administrators. *Lisa C. Streete, et al. v. Blue Cross and Blue Shield of Louisiana*, USDC W.D. LA, No. 1:19-cv-1088-DDD-JPM, (Doc. 33, filed Feb. 2, 2021).

## RECENTLY FILED ACTIONS

OON orthopedic group seeks \$2,952,747.49 in benefits and alleges "automatic, indiscriminate, adverse benefit determinations lacking any and/or adequate explanation of the reason or reasons for denial." Billed charges were \$3,598,367.09 and the amount reimbursed was \$637,706.46. Other actions by this provider reported at ***MCLU Vol. 163, 167, and 168***.

Removed action in which member of FEHBA plan challenges subrogation lien on personal injury settlement following car accident.

OON plastic surgery group seeks ERISA benefits from self-funded plan associated with alleged emergency treatment of a shotgun wound to the hand and wrist. The plan denied "many components" of the claim on the grounds the services were non-emergent and only covered when in-network. For the paid claim, billed charges were \$25,923.15 and the amount paid was \$1,663. Total billed charges were \$239,020.15. Other actions filed by this provider reported at ***MCLU Vol. 151, 169***.

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## RECENTLY FILED ACTIONS

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Removed action in which pro se member seeks benefits from MA plan associated with treatment for stroke suffered while in Jerusalem, Israel. Basis of denial is not stated in underlying complaint.

Member seeks over \$90,000 in ERISA benefits associated with residential inpatient treatment at Elements Wilderness Program, Summit Preparatory School, and Viewpoint Center. The Elements and Summit claims were denied as untimely submitted. Coverage was provided at Viewpoint from April 25, 2019 through May 15, 2019 but denied thereafter as not medically necessary.

OON air ambulance provider and alleged assignee seeks ERISA benefits associated with transportation from Hong Kong to Chicago for purposes of treating 27-year-old member suffering from kidney disease, liver failure, respiratory failure, and septic shock. Plaintiff asserts “the claim was denied based on an incorrect assertion that the services were not covered.” Other claims by this provider reported at *MCLU Vol. 113, 137, 144, 167*.

Member seeks ERISA benefits associated with residential inpatient treatment received at Open Sky Wilderness from November 7, 2017 through January 24, 2018. The claim was denied “due to missing clinical information” and because “treatment was not medically necessary” because the “LOCAT criteria does not support residential treatment.” Plaintiff asserts violations of ERISA and MHPAEA.

Removed action in which member asserts breach of contract and unfair settlement practices associated with the denial of a claim for inpatient residential treatment at Vista Residential Treatment Center. The underlying complaint does not identify the grounds for denial.

Removed matter in which member seeks \$34,352 in ERISA benefits associated with emergency treatment following automobile collision. The grounds for denial are not stated in the underlying complaint.

## ADDITIONAL NEWSWORTHY (REGULATORY)

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Colorado Commissioner of Insurance adopts regulation implementing utilization review regime encompassing standards for reasonable investigation of UM decisions and notices of those decisions, to be codified at 3 CO Admin. Code 702-4:4-2-17 et al. and effective March 15, 2021. 2021 CO Reg. 572185, (filed Feb. 10, 2021).

# MCLU is online and searchable.

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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-DEP, (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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