

# Managed Care Litigation Update®

## NEWSWORTHY

Texas Court of Appeal affirms dismissal of OON emergency claims, holding the Texas emergency care statute does not provide a private right of action. The Court further affirmed dismissal of claims for unfair settlement practices, prompt pay violations, quantum meruit, and declaratory judgment. *Texas Medicine Resources, LLP, et al. v. Molina Healthcare of Texas, Inc.*, No. 05-19-1447-CV, 2021 WL 688446 (Tex.App.—Dallas Feb. 23, 2021). **DISCLOSURE** – I am counsel of record in this case.

District Court grants in part and denies in part ERISA plan's motion to dismiss, ruling pre-litigation claims administration communications over two years indicate "it is plausible that Aetna waived the Plan's anti-assignment provision." After ruling plaintiff had standing, the Court dismissed the fiduciary claims and all non-ERISA claims. *Classic Air Care, LLC v. Aetna Life Insurance Company, et al.*, USDC D. UT, No. 2:20-cv-506-TC-CMR, 2021 WL 199286 (Doc. 27, filed Jan. 20, 2021). Previously reported at *MCLU Vol. 156*.

District Court grants motion to dismiss underpayment claims of OON plastic surgery group on grounds alleged statement in EOB did not constitute a contract. *New York Group for Plastic Surgery LLP v. Anthem Blue Cross, et al.*, USDC SDNY, No. 1:20-cv-4234-JPO, 2021 WL 310943 (Doc. 34, filed Jan. 29, 2021). Previously reported at *MCLU Vol. 154*.

## RECENTLY FILED ACTIONS

Member seeks ERISA statutory damages for alleged failure to provide information responsive to conflicting certificates of credible health coverage.

Member seeks over \$150,000 in ERISA benefits associated with residential inpatient treatment at Ashcreek Ranch Academy and alleges violations of the MHPAEA. "The EOB's denied payment on the grounds that the claim wasn't timely filed, prior authorization was not obtained, because the service billed did not match the authorization requested, because J.T. had allegedly not made measurable progress toward treatment goals, and because insufficient records had been provided."

OON practice of neurologists seeks ERISA benefits and allege underpayment with respect to "emergency, diagnostic, evaluative, and surgical services" provided to member. Billed charges were \$261,150 and the amount paid was \$12,811.53. Basis of payment is not stated in complaint. Other actions by this provider reported in *MCLU Vol. 77, 79, 80, 84, 113, 154, 157, 158, 160, 163*.

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## RECENTLY FILED ACTIONS

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Removed action in which OON plastic surgeon seeks ERISA benefits and asserts underpayment associated with hand surgery. Billed charges were \$214,412 and the amount paid was \$9,921.90. Basis of payment was “maximum allowable payment.” **DISCLOSURE** – I am counsel of record for one of the defendants.

Removed action in which dentists seek benefits and allege underpayment pursuant to in-network contracts since 2015. Plaintiffs request punitive damages and disgorgement pursuant to state law remedy for a “pattern and practice of underpaying claims.”

Member seeks over \$170,000 in ERISA benefits from full-insured plan associated with residential inpatient treatment at Evoke at Entrada and Live Strong House. The Evoke claim was denied as excluded on the grounds it was a wilderness program. The LSH claim was denied on the grounds LSH was not properly licensed.

Member seeks over \$50,000 in ERISA benefits from self-funded plan associated with residential inpatient treatment at True North Wilderness Program, Inc. The claim was denied on the grounds “Your covered benefits do not include coverage for wilderness programs.”

OON plastic surgeon seeks benefits associated with “emergency evaluative and surgical treatment” and alleges underpayment. Billed charges were \$17,375 and the amount reimbursed was \$567.24. The basis of payment is not stated in the complaint. Other actions by this provider reported in **MCLU Vol. 118, 124, 137, 138, 145, 147, 148, 152, 160, 165**.

Member, an adult transitioning female, seeks benefits associated with “revision facial feminization surgery (RFFS).” The basis for denial of the claim is not alleged in the complaint.

OON orthopedic surgeons seek ERISA benefits associated with “emergency trauma surgery” and allege underpayment against out-of-state [health plan]. Billed charges were \$32,036 and the amount reimbursed was \$3,887.06. Other actions by this provider reported in **MCLU Vol. 112, 119, 123, 139, 145, 153, 154, 166, 169**.

OON air ambulance operator seeks benefits and alleges underpayment associated with transportation from the port of Grenada to Fort Lauderdale, Florida. Billed charges were \$414,597 and the amount reimbursed was \$25,675.40. Basis of payment is not stated in the complaint. Another action by this provider reported at **MCLU Vol. 132**.

OON ambulatory surgical center seeks \$13,600 in ERISA benefits and alleges wrongful denial. The response to the appeal stated the claim “is denied because it has been released ...per the terms of the parties’ Settlement Agreement.” Other action by this provider reported at **MCLU Vol. 150**.

Removed putative class action in which member challenges subrogation rights of ERISA plan following personal injury settlement. Plaintiff argues the subrogation provision only appears in the Summary Plan Description “and does not appear in a Plan document.”

ADDITIONAL NEWSWORTHY (REGULATORY)

Washington Health Care Authority announces Medicaid State Plan Amendment requiring Medicaid MCOs to cover applied behavioral analysis (ABA) therapy to treat autism spectrum disorder of members over the age of twenty. Medicaid State Plan Amendment (SPA) 21-00010 Applied Behavioral Analysis Services, WSR 21-040025, (Feb. 17, 2021).

## MCLU is online and searchable.

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eating disorder

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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. 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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