

# Managed Care Litigation Update®

## NEWSWORTHY

District court concludes exclusion for Applied Behavior Analysis and Intensive Behavioral Therapies is a treatment limitation for purposes of the MHPAEA in granting member partial summary judgment in claim seeking mental health benefits. *Jane Doe v. United Behavioral Health, et al.*, USDC ND CA, No. 4:19-cv-7316-YGR, (Doc. 67, filed Mar. 5, 2021). Previously reported in *MCLU Vol. 140*.

District court grants plan summary judgment in dismissing OON residential treatment center's underpayment claims, holding that "Plaintiff's claims fail because there is no evidence that it agreed to pay Plaintiff's full billed charges." *Dedicato Treatment Center, Inc. v. Independence Blue Cross Blue Shield of Pennsylvania, Inc.*, USDC CD CA, No. 2:19-cv-3657-SB-SK, (Doc. 39, filed Feb. 3, 2021) (NOA filed). Previously reported in *MCLU Vol. 127*.

District court reaffirms its summary judgment dismissing Indian Tribe's claim that the plan failed to demand Medicare Like Rates from providers. The court concluded the Medicare Like Rates requirement only applied to the Purchased / Referred Care Program, which BCBSMI did not administer. *Saginaw Chippewa Indian Tribe of Michigan, et al. v. Blue Cross Blue Shield of Michigan*, USDC ED MI, No. 1:16-cv-10317-TLL-PTM, (Doc. 202, filed Feb. 1, 2021) (NOA filed). Previously reported in *MCLU Vol. 49*.

## RECENTLY FILED ACTIONS

Removed action in which member seeks ERISA benefits from self-funded plan regarding "emergency medical services from approximately August 20, 2019 through and including September 27, 2019)." Billed charges were \$564,269 and the claim was denied. The basis of denial is not stated in the underlying complaint.

Member seeks "in excess of \$357,425.09" in ERISA benefits associated with treatment following a fall from a deer stand. The basis of the denial was an exclusion for "intoxication or drug use." Plaintiff asserts "Pursuant to Section 38-71-380 of the South Carolina Code, the exclusion upon which [ ] denied coverage is illegal and contrary to South Carolina public policy."

Removed action in which member seeks \$23,948 in ERISA benefits associated with treatment following motor vehicle accident. Basis of denial is not stated in underlying complaint.

Upgrade to a Premium Subscription and receive case caption and court information to the cases discussed in this Basic Subscription version. A Premium Subscription also includes access to the searchable Managed Care Litigation Database®. For more information, visit

<http://www.managedcarelitigationupdate.com/subscription-information/>

## RECENTLY FILED ACTIONS

---

Removed action in which children's hospital and alleged assignee seeks \$90,340 in benefits and alleges wrongful denial. Basis of the denial is not stated in the underlying complaint.

OON chiropractic practice seeks ERISA benefits for alleged "underpayments, delayed payments and improper denials" following placement on prepayment review from 2015 through 2019. Plaintiff asserts "[a]s instituted by Empire, 'prepayment review' violates both the New York Insurance Law and the [ERISA]."

Removed action in which physician and alleged assignee seeks ERISA benefits associated with unspecified surgery. Billed charges were \$7,519 and the amount reimbursed was \$2,255.27. Plaintiff additionally asserts \$978,340 in statutory penalties for the alleged failure to provide the SPD. Another action filed by this provider and reported in *MCLU Vol. 58*.

Member seeks over \$200,000 in ERISA benefits from self-funded plan associated with residential inpatient treatment at Elevations RTC and Daniels Academy. Both claims were denied as not medically necessary. Plaintiffs additionally asserted violations of MHPAEA.

Member seeks approximately \$50,000 in ERISA benefits associated with residential inpatient care at Paradigm Treatment Center from November 15, 2019 through December 14, 2019. Plaintiff alleges he never received a response to his claim delivered via certified mail.

Member seeks ERISA benefits from self-funded plan associated with residential inpatient treatment at New Directions for Young Adults from September 4, 2018 through July 31, 2019. The denials were upheld on appeal for lack of medical necessity applying the Optum Level of Care Guidelines.

Member seeks ERISA benefits associated with residential inpatient treatment at Evoke Wilderness, ViewPoint Center, and Change Academy at Lake of the Ozarks. Denials of the ViewPoint and Change Academy claims were upheld by an external review as not medically necessary, and plaintiff did not seek external review of the Evoke claim.

## ADDITIONAL NEWSWORTHY (REGULATORY)

Virginia Department of Medical Assistance Services issues regulations codifying the Commonwealth Coordinated Care Plus Medicaid managed LTSS program, establishing responsibilities of MCOs, continuity of care requirements, and enrollee and provider appeal processes, beginning at 12 Va. Admin. Code 30-12—600. 37 VA Reg. Regs. 1564, (filed Mar. 1, 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.

Access requires an upgrade to a **Premium Subscription**.

MANAGED CARE LITIGATION UPDATE® Search Case Results Contact Admin ▾ Hello jherman@herman-lawfirm.com! Log off

### Search

Payer  Plaintiff Name  Date Range  To  District Court  Court of Appeal

Select Payer ▾  Select District Court ▾ Select Court of Appeal ▾

MCLU Vol#  Case Name and Docket No.  Case Description  Judge

eating disorder

Show 10  entries

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	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

---



**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.



*Managed Care Litigation Update is a registered trademark of Jonathan M. Herman, LLC*