

Managed Care Litigation Update®

NEWSWORTHY

District court denies request for injunction and upholds Arizona Medicaid exclusion for gender reassignment surgery. Plaintiffs argued the exclusion violated the Medicaid EPSDT provision, the Medicaid comparability requirements, the equal protection clause, and section 1557 of the ACA. *Janice Hennesy-Waller, et al. v. Jami Snyder*, USDC D. AZ, No. 20-335-TUC-SHR, (Doc. 66, filed Mar. 30, 2021).

Fifth Circuit affirms DHS denial of Louisiana Medicaid proposal to compute the Estimated Acquisition Cost for reimbursement purposes that included a markup of 1.05%. *Louisiana Dep't of Health v. United States Department of Health and Human Services, et al.*, USAC 5th Cir., No. 20-60213, (Doc. 00515808162, filed Apr. 5, 2021).

District court grants defendants' motion for judgment on the pleadings dismissing claims that the plan's Autism Exclusion violates the MHPAEA. The court concluded that "the exclusion categorically denies coverage for all charges incurred for ASD-related treatment" and therefore is not a "treatment limitation" for purposes of the MHPAEA, notwithstanding coverage for "screening/diagnostic services and pediatric visits" which are "screening tools" rather than treatments. *T.S., et al. v. Heart of Cardon, LLC, et al.*, USDC SD IN, No. 1:20-cv-1699-TWP-TAB, (Doc. 50, filed Mar. 16, 2021).

RECENTLY FILED ACTIONS

Member seeks ERISA benefits associated with name brand prescriptions to treat autism spectrum disorder where plaintiff asserts the generic substitutions are not working similarly.

Please join me on June 9 – 10, 2021 at the ACI Managed Care Disputes and Litigation **Virtual Conference**, where I will be co-presenting "Building Better In-House and Outside Counsel Relationships: Industry Best Practices and Ethical Considerations." It promises to be an unparalleled learning experience. <https://www.americanconference.com/managed-care-disputes-litigation/>

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RECENTLY FILED ACTIONS

Chiropractor and alleged assignee seek \$2,932 in ERISA benefits and over \$100,000 in statutory penalties associated with treatment of patient and subsequent alleged failure to process appeal. The denial of the appeal stated, "Plaintiff was not the Authorized Representative for the Patient because [an authorization form] was not signed by the Patient."

Removed action in which member challenges denial of \$23,240.36 hospital bill and \$4,731 anesthesiology bill. During pre-authorization process, Aetna changed the approved facility for the surgery, but member had the surgery conducted at the unapproved location.

Member seeks over \$260,000 in ERISA benefits from self-funded plan associated with residential inpatient treatment at New Haven Residential Treatment Center. Portions of the claim were denied for failure to meet the out-of-network Residential Treatment Center criteria.

Chiropractor seeks \$6,059 in ERISA benefits in addition to statutory penalties for alleged failure to provide SPD when requested. Claim was denied on the grounds the claimed services were not documented. Another claim by this provider reported at *MCLU Vol. 174*.

Removed action in which mental health provider seeks \$23,173.02 in ERISA benefits. Coverage for the last six days of the member's treatment were denied for lack of medical necessity.

Member seeks over \$110,000 in ERISA benefits associated with residential inpatient treatment at Northwest Passage treatment facility. Coverage was provided from September 11, 2017 through September 25, 2017 but denied thereafter on the grounds residential treatment was no longer medically necessary.

Removed action in which OON county hospital seeks \$667,850 in ERISA benefits associated with emergency treatment and alleges underpayment of two claims. Basis of payment made is not stated in underlying complaint.

PBM and insurers seek arbitration of reimbursement dispute with The Chickasaw Nation pursuant to network contract. Plaintiffs seek a stay of prior litigation filed.

Member seeks ERISA benefits associated with private duty nursing care to treat form of muscular dystrophy known as Nemaline Rod Myopathy. Plaintiff asserts her primary insurer was paying for 12 hours per day of nursing care and that her secondary ERISA insurer was paying for the other 12. The ERISA plan terminated coverage for private duty nursing care, though it is unclear from the complaint whether the reason was custodial care or lack of medical necessity.

Removed action in which emergency services group seeks benefits and alleges underpayment. Billed charges were \$699,244.02 and the amount paid was \$78,499.16. Other actions by this provider reported in *MCLU Vol. 139, 141, 143, 147, 148, 149, 165*.

Removed action in which member seeks ERISA benefits associated with cancer treatment where plan “denied and/or improperly discounted claims.” Plaintiff further claims statutory damages for alleged failure to provide requested plan documents.

OON physician seeks benefits associated with emergency surgery. Billed charges were \$253,750 and the amount paid was \$1,260.52. The basis for denial and partial payment are not stated in the complaint. Another action by this provider reported at *MCLU Vol. 169*.

Pro se member seeks surgery benefits and/or cancellation of marketplace plan and alleges fraudulent administration of plan.

Removed action in which provider seeks \$2,160 in ERISA benefits for outpatient physical therapy services. Basis of denial is not stated in underlying complaint. Other actions by this provider reported at *MCLU Vol. 153, 154*.

Member seeks benefits from group plan associated with daughter’s scoliosis treatment, particularly a “VBT procedure.” The claim was denied as experimental/investigational.

OON orthopedic group and alleged assignee seeks benefits and alleges wrongful denials and underpayments on certain claims from 2014 forward. Billed charges were \$3,708,586.28 and the amount paid was \$624,416.19. Other actions by this provider reported at *MCLU Vol. 163, 167, 168, 170, 173*.

Member seeks ERISA benefits associated with treatment following car accident. The claims were denied on the grounds “Your auto insurance is responsible for this.”

Removed action in which OON hospital seeks \$4,397,310.13 in benefits associated with 58 claims from 2017 through 2020. Total billed charges were \$4,928,889.82. Plaintiffs assert breach of implied contract based in part on prior authorizations.

Member seeks over \$186,000 in ERISA benefits from self-funded plan associated with residential inpatient treatment at Aspiro Wilderness Adventure Therapy and Ashcreek Ranch Academy. The Aspiro claim was denied pursuant to the wilderness exclusion, and the Ashcreek claim was denied as not medically necessary pursuant to the Psychiatric Disorder Treatment – Residential Treatment Center guideline.

Member seeks ERISA benefits from self-funded plan associated with residential inpatient treatment at Uinta Academy. The claim was denied as not medically necessary pursuant to the Optum Level of Care Guidelines for Mental Health Residential Treatment Center Level of Care.

ADDITIONAL NEWSWORTHY (REGULATORY)

New Mexico legislature passes new prompt pay requirements for pharmacy claims with a response deadline of 14 days and an interest penalty of 1.5% per month, codified at NM St. § 59A-16-21.1. 2021 NM Laws Ch. 45 (S.B. 124), (approved Apr. 5, 2021).

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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