

Managed Care Litigation Update®

NEWSWORTHY

District court denies plan's motion to dismiss, finding that a member who asserts that he was denied coverage because he is transgender states a claim for sex discrimination under Section 1557 of the ACA. *C.P., et al. v. Blue Cross Blue Shield of Illinois*, USDC W.D. WA, No. 3:20-cv-6145-RJB, (Doc. 23, filed May 4, 2021). See also *MCLU Vol. 165*.

District court grants summary judgment dismissing out-of-state specialty pharmacy's claim that denial of network application violated North Carolina's all qualified providers pharmacy statute. *Senderra RX Partners, LLC v. Blue Cross and Blue Shield of North Carolina*, USDC MD NC, No. 1:18-cv-871-CCE-JEP, (Doc. 156, filed Apr. 5, 2021) (NOA filed May 4, 2021).

District court rules that Puerto Rico regulations seeking to forbid MAOs from agreeing on lower fees than the Medicare fee schedule and forbidding the termination of network providers were both preempted by Medicare Part C's express-preemption statute. *Medicaid and Medicare Advantage Products Ass'n of Puerto Rico, Inc., et al. v. Domingo Emanuelli-Hernandez, et al.*, U.S.D.C. D. PR, Doc. No. 3:19-cv-1940-SCC, (Doc. 136, filed Apr. 5, 2021) (NOA filed Apr. 23, 2021).

RECENTLY FILED ACTIONS

Member seeks ERISA benefits associated with pre-authorized surgery. Member asserts the claim was improperly processed as out-of-network, resulting in a balance owed of \$27,841.18 on billed charges of \$30,000.

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

Member challenges ERISA plan's subrogation lien on personal injury settlement on the grounds the Michigan No-Fault Act prohibits member from recovering any economic damages for medical expenses from the at-fault driver.

Removed action in which member seeks benefits following treatment for automobile accident, including neck surgery. Plaintiff asserts over \$98,000 of over \$125,000 in bills remain unpaid, and that the claim for neck surgery was denied as not medically necessary.

Removed action in which OON physician seeks ERISA benefits associated with emergency services and pre-authorized services for patients. Plaintiff asserts payments have been less than 18% of billed charges.

Member challenges ERISA subrogation lien following \$1,000,000 recovery associated with medical malpractice claim.

OON provider seeks ERISA benefits associated with diagnosis, vaccination, and treatment of coronavirus and alleges the FFCRA and CARES Act as the bases of recovery.

Removed action in which pro se physician seeks \$77,159.27 in ERISA benefits pertaining to alleged underpayments for four surgeries.

Member seeks ERISA benefits from self-funded plan associated with residential inpatient treatment at Solacium Sunrise and Red Cliff Ascent. The Sunrise claim was denied as not medically necessary pursuant to the Psychiatric Disorder Treatment – Residential Treatment Center guideline. The Red Cliff Ascent claim was denied on the same grounds.

Putative class action in which member challenges exclusion from all mental health and substance abuse treatment services on the grounds the programming "is considered unproven, experimental, or investigational." Plaintiff asserts violations of MHPAEA.

Member seeks ERISA benefits from self-funded plan associated with clinical trial for terminal leptomenigeal cancer. The claim was denied as investigational.

Removed action in which lab seeks benefits under the FFCRA for Covid-19 tests performed on members. The underlying complaint asserts that the complete medical record was requested but plaintiff could only provide summaries of tests performed. No further information regarding denial was provided.

OON hospitals seek benefits from marketplace exchange plans associated with emergency services. Plaintiffs assert claims for unjust enrichment, quantum meruit, and breach of implied contract.

Member seeks ERISA benefits associated with residential inpatient treatment at Evoke at Entrada. The claim was denied for lack of pre-certification. Plaintiff asserts violations of MHPAEA as well.

ADDITIONAL NEWSWORTHY (REGULATORY)

Colorado Division of Insurance issues regulations implementing state and federal mental health parity requirements, to be codified at 3 CCR 702-4:4-2-64. 2021 CO Reg. Text 578657, (filed May 10, 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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