

# Managed Care Litigation Update®

## NEWSWORTHY

District court dismisses underpayment claims of residential substance abuse treatment facility. The court determined the complaint's allegations of a contract to pay UCR did not detail "a clear and definite promise to support an enforceable obligation." *Aton Center, Inc. v. Carefirst of Maryland, Inc., et al.*, USDC D MD, No. 1:20-cv-3170-DKC, (Doc. 18, filed May 10, 2021). See also *MCLU Vol. 163*.

District court dismisses ERISA participants' putative class action challenging United's practice of cross-plan offsetting for lack of jurisdiction. Plaintiffs failed to allege that they themselves were subject to a disputed cross-plan offset. *Rick Scott, et al. v. UnitedHealth Group, Inc.*, USDC D. MN, No. 0:20-cv-1570-PJS-BRT, (filed May 20, 2021). See also *MCLU Vol. 156*.

District court denies class certification in putative class action alleging Cigna and its PBMs conspired to charge exorbitant and unauthorized overcharges. The court referred to "material differences in language amount the thousands of health plans at issue" in determining plaintiffs could not show common questions of law or fact. *Kimberly A. Negron, et al. v. Cigna Health and Life Insurance Company*, USDC D. CT, No. 3:16-cv-1702-JAM, (Doc. 401, filed May 20, 2021). See also *MCLU Vol. 66*.

## RECENTLY FILED ACTIONS

Removed action in which member seeks \$21,184.58 in benefits associated with treatment at ER for laceration above right eyebrow and hemorrhagic brain contusion. The claim was denied on the grounds a "one day inpatient stay was not medically necessary under MCG M-340 (Syncope)."

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

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Removed action in which OON provider seeks benefits and alleges underpayment associated with emergency services. Billed charges were \$363,387.96 and the amount paid was \$78,243.54. Other actions by this provider reported at *MCLU Vol. 163, 167, 168, 170, 173, 174, 175*.

Estate of deceased member asserts wrongful denial of benefits associated with termination of coverage for skilled nursing facility in lieu of long-term care.

Member seeks ERISA benefits from self-funded plan associated with residential inpatient treatment at Elements Wilderness Program and Waypoint Academy. The Elements claim was denied as OON and lacking a pre-authorization, and the level 2 appeal upheld the denial on grounds the wilderness care was not covered. Coverage was provided at Waypoint from September 5, 2018 through October 10, 2018, but denied thereafter as not meeting the level of care guidelines.

Member seeks benefits associated with residential mental health treatment at Ironwood Residential Treatment Center. After coverage was provided for approximately two months, the claim for continuing inpatient treatment was denied as not meeting the applicable level of care guidelines.

Removed action in which member seeks ERISA benefits associated with ER visit to treat “extreme chest pain.” The grounds denial or partial denial are not stated in the underlying complaint.

OON brain surgeon seeks ERISA benefits associated with emergency brain surgery and alleges underpayment. After allowing the full \$1,035 in billed charges on the first HCFA, plan allowed \$2,467.71 on billed charges of \$161,000 from the second HCFA. Plaintiff asserts the claim was inappropriately processed as elective rather than emergent. Other actions by this provider reported in *MCLU Vol. 77, 79, 80, 84, 113, 154, 157, 158, 160, 163, 171*.

Member seeks over \$375,000 in ERISA benefits from self-funded plan associated with residential inpatient treatment at Change Academy Lake of the Ozarks and alleges violations of the MHPAEA. Coverage was provided from January 22, 2018 through May 20, 2018 but denied thereafter as not medically necessary pursuant to the MCG care guidelines Residential Acute Behavioral Health.

Members seek “nearly \$200,000” in ERISA benefits associated with residential substance abuse treatment at multiple facilities. Plaintiffs allege only one denial was provided which asserted a lack of necessary records and that that denial did not pertain to subsequent claims.

Removed action in which member seeks COBRA benefits associated with treatment for broken hip. Plaintiff alleges his employee plan was primary to Medicare Part B and that his COBRA plan should have been as well.

Member seeks ERISA benefits associated with applied behavioral analytics treatment for autistic son. Plaintiff asserts “[ ]s final word on its coverage obligation is that there is no coverage for A.W.’s treatment at a licensed wilderness therapy program because it doesn’t cover applied behavioral analytics.”

ER physician and alleged assignee seeks benefits associated with treatment. Billed charges were \$140,769.19 and the amount paid was \$5,673.75. Plaintiff alleges the reimbursement was less than the Medicare allowable and usual and customary rates.

In-network provider challenges overpayment request on grounds plan seeks overpayments from outside the limitations period. Provider admits the overpayment and asserts it brought the overpayment to the attention of the plan, but it was not corrected for several years.

Removed action in which provider seeks ERISA benefits and alleges “significant underpayment” following preauthorization. Billed charges were \$42,998 and the amount paid was \$789.60. Another action by this provider reported in *MCLU Vol. 123*.

Member seeks over \$310,000 in ERISA benefits from self-funded plan associated with residential treatment at New Vision Wilderness and Change Academy Lake of the Ozarks (“CALO”). Plaintiff asserts the New Vision claim was mistakenly denied for lack of records and the appeal was inappropriately classified as a provider appeal but not processed. The CALO claim was denied as not medically necessary.

## ADDITIONAL NEWSWORTHY (REGULATORY)

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USDHH OIG asserts \$3.47 million in Medicare Advantage overpayments to Anthem Community Insurance Company, Inc. associated with submission of high-risk diagnosis codes. The findings, which are contested by Anthem, assert that “most of the selected high-risk diagnosis codes that Anthem submitted . . . did not comply with Federal requirements.” May 2021 DHHS OIG MA Compliance Audit of Specific Diagnosis Codes that Anthem Community Insurance Company, Inc. Submitted to CMS, available at <https://oig.hhs.gov/oas/reports/region7/71901187.asp>.

# 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.

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## Search

**Payer**  **Plaintiff Name**  **Date Range**  To  **District Court**  **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	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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