

Managed Care Litigation Update®

NEWSWORTHY

Bankruptcy court dismisses remaining underpayment claims by lab against state governmental plan, relying on Mississippi statute providing that an assignee agrees to accept plan's payment as payment in full.

Cunningham v. Blue Cross & Blue Shield of Mississippi, USBC ND TX, No. 19-03183-hdh, (Doc. 59, filed Jun. 4, 2021). Previously reported in *MCLU Vol. 139*. **DISCLOSURE: I represent BCBS Mississippi in this matter.**

District court grants summary judgment in favor of plan on most claims where OON plastic surgeon alleged underpayment for double mastectomy and bilateral breast reconstruction. The case was remanded to CIGNA to recalculate the maximum reimbursable charge for certain CPT codes.

The Plastic Surgery Center, P.A. v. Cigna Health and Life Insurance Company, USDC D. NJ, No. 3:17-cv-2055-FLW-DEA, (Doc. 128, filed Apr. 29, 2021) (NOA filed May 18, 2021 and Notice of Cross Appeal filed Jun. 1, 2021). Previously reported in *MCLU Vol. 77*.

District court grants "in substantial part" motion to certify class action alleging plaintiffs were harmed by "Aetna's general policy of denying coverage requests for lumbar artificial disc replacement surgery because the surgery is 'experimental or investigational.'" *Brian Hendricks, et al. v. Aetna Life Insurance Company*, USDC CD CA, No. 2:19-cv-6840-CJC-MRW, (Doc. 94, filed Jun. 11, 2021). Previously reported in *MCLU Vol. 134*.

RECENTLY FILED ACTIONS

Removed action in which hospital seeks \$8,754 in ERISA benefits and asserts wrongful denial. The grounds for the denial are not stated in the underlying complaint. Another action filed by this provider was reported in *MCLU Vol. 164*.

Member seeks ERISA benefits from self-funded plan associated with residential treatment at La Europa Academy and Mosaic House. The La Europa claims were denied for lack of information, lack of PA, and because the services were excluded. The Mosaic House claim was denied as excluded. Plaintiff alleges MHPAEA violations.

Member seeks ERISA benefits associated with daily antibiotic to treat a microbacterial infection in his spine. Plaintiff refers to similar prior litigation in 2014, 2016, and 2020, including one case reported in *MCLU Vol. 151*.

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RECENTLY FILED ACTIONS

Member seeks ERISA benefits from self-funded plan associated with outpatient surgery. Basis of payment was “maximum non-network reimbursement program allowable amounts.” Plaintiff alleges the provider is in-network and should have been processed as in-network.

OON lab seeks benefits and alleges failure to reimburse approximately 51,000 claims for COVID testing and an additional 6,860 other claims for pathology, cytology services, and molecular testing. Plaintiff alleges violations of the FFCRA and the CARES Act.

Casualty insurer challenges \$111,351.01 subrogation lien and asserts that the underlying treatment was not related to member’s auto accident.

Removed matter in which member seeks benefits associated with hemorrhoidectomy. Member is getting balance billed following retroactive denial and recoupment of amounts paid on grounds procedure was not medically necessary.

Member seeks over \$150,000 in ERISA benefits from self-funded plan associated with residential inpatient treatment at Fulshear Ranch Academy. The claim was denied as not medically necessary pursuant to the MCG guideline Residential Behavioral Health Level of Care, Adult.

Removed action in which members seek ERISA benefits associated with treatment at “long-term medical facility.” The claim was denied as not medically necessary.

Member seeks ERISA benefits and alleges balance bill associated with treatment at Intermountain Medical Center. Billed charges were \$72,931.40 and the amount paid was \$28,363.04. Plaintiff asserts the majority of claims were denied as OON and that the billed charges exceed the maximum allowable amount.

Member seeks ERISA benefits associated with residential inpatient treatment at BlueFire Wilderness Therapy and Uinta Academy and alleges violations of MHPAEA. The BlueFire claim was denied because, according to Optum Behavioral Clinical Policy, wilderness therapy is considered unproven and not medically necessary. Coverage at Uinta was provided from August 9, 2018 through September 22, 2018 but denied thereafter as not medically necessary.

Member seeks ERISA benefits associated with residential treatment at Boulder Creek Academy, Aspiro Wilderness Adventure Therapy, Elevations RTC, and Heritage School. The complaint does not indicate why the Boulder Creek or Aspiro claims were denied. The Elevations and Heritage claims were denied as not medically necessary.

Member seeks ERISA benefits on behalf of minor child associated with speech therapy sessions. Plaintiff asserts 10 sessions were initially pre-authorized but later denied due to unspecified exclusions.

Removed action in which long-term acute care facility seeks ERISA benefits and asserts its bill of \$119,850 for 47 days of treatment has not been paid. Underlying complaint does not identify reasons for nonpayment.

OON plastic surgeon alleges underpayment associated with treatment for axillary hidradenitis performed under an in-network exception. Billed charges were \$76,750 and the amount paid was \$11,222.54. Basis of payment is not identified in the complaint. Other actions filed by this provider and reported in *MCLU Vol. 82, 95, 147, 148*.

OON orthopedic surgeon and alleged assignee seeks benefits and alleges underpayment associated with laminectomies, decompression, diskectomy, fusion, and bilateral pedicle instrumentations. Billed charges were \$348,103 and the amount paid was \$5,487.34. Basis of payment was the "Plan Allowance." Other actions filed by this provider and reported in *MCLU Vol. 91, 93, 122, 124, 155, 161*.

Member seeks ERISA benefits associated with residential inpatient treatment at Open Sky and an associated claim with Right Direction. The Open Sky claim was denied pursuant to a "nonmedical counseling or ancillary services" exclusion, and the Right Direction claim was denied as noncovered transportation services.

Removed action in which physician seeks \$8,525 in FEHBA benefits associated with "non-surgical spinal decompression." Plaintiff alleges the services were pre-approved under code S9090 but that benefits under code 97039 were improperly denied.

OON neurologist seeks ERISA benefits and alleges underpayment associated with "emergency evaluative and surgical treatment." Billed charges were \$96,700 and the amount paid was \$37,764. Other actions by this provider reported in *MCLU Vol. 77, 79, 80, 84, 113, 154, 157, 158, 160, 171, 177*.

Removed action in which plastic surgeon seeks ERISA benefits associated with surgery to treat "chronic paralysis of the right hemidiaphragm due to right phrenic nerve injury and cervical radiculopathy." Billed charges for the primary surgeon were \$100,969 and charges for the assistant were \$91,151. The amounts paid were \$11,948.59 and \$1,343.42, respectively. Other actions by this provider reported in *MCLU Vol. 77, 89, 95, 96, 99*.

Removed action in which surgeon seeks benefits and alleges underpayment associated with alleged emergency services including "complex surgical procedures relating to a severe, traumatic open wound to Patient's right knee with exposed patella and related physical complications." Total billed charges for the 3 surgeries were \$251,580.40 and the amount paid was \$13,425.65. Other actions filed by this provider reported in *MCLU Vol. 168, 171*.

Removed action in which DME provider seeks in excess of \$102,832.52 in benefits that is the subject of an overpayment request. Plaintiff alleges [] determined that the patients had not appeared for a physical consultation by physicians.

OOON physician and alleged assignee seeks ERISA benefits and alleges underpayment associated with surgical treatment of six-month-old-baby to treat congenital ear deformities. Plaintiff asserts that an in-network exception was provided and that \$39,600 was billed but that \$9,962.82 was paid. Other claims by this provider reported at *MCLU Vols. 95, 130, 139, 147, 151, 162, 166*.

Removed action in which hospital in-network with BCBS [] alleges BCBS [] failed to properly pay either the contracted rate or UCR for 15 claims. Total billed charges were \$526,645.58 and the amount paid was \$16,608.43. Plaintiff asserts it would receive an additional \$191,245.72 pursuant to the terms of the BCBS [] contract. Other actions filed by this provider reported in *MCLU Vol. 77, 116, 148, 159, 163, 175*.

ADDITIONAL NEWSWORTHY (REGULATORY)

Texas Legislature passes act to create an “all payors” database effective September 1, 2021 which will require the disclosure of network rates and OON allowed amounts. 2021 Tex. Sess. Law Serv. Ch. 333 (H.B. 2090), (approved Jun. 7, 2021).

MCLU is online and searchable.

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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	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



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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