

Managed Care Litigation Update®

NEWSWORTHY

District court permits claim of discrimination in violation of Section 1557 of the ACA to proceed where the Medicare Advantage plan contains an exclusion pertaining to gender-confirming care. *Christopher Fain, et al. v. William Crouch, et al.*, USDC SD WV, No. 3:20-cv-740, (Doc. 63, filed Jun. 28, 2021).

District court denies motion to dismiss and compel arbitration after concluding group of alleged “faith-based Health Care Sharing Ministry” plans did not satisfy requirements of HCSCM exemption from state and federal health insurance regulations. *Noelle LeCann, et al. v. The Aliera Companies, Inc.*, USDC ND GA, No. 1:20-cv-2429-AT, (Doc. 49, filed Jun. 22, 2021).

District court grants plan’s motion to remand suit for recovery of overpayment following provider’s removal on basis of ERISA, FEHBA, and federal officer removal. Court determined overpayment claims were not completely preempted. *HMO Louisiana, Inc., et al. v. Narinder M. Gupta*, USDC EDLA, No. 2:21-cv-522-SSV-JVM, (Doc. 24, filed Jun. 30, 2021).

District court grants plan’s motion to dismiss OON laboratory’s claims of underpayment for Covid-19 tests for failure to sufficiently allege assignment of ERISA claims. *Open MRI and Imaging of RP Vestibular Diagnostics, P.A. v. Cigna Health and Life Insurance Company*, USDC D. NJ, No. 2:20-cv-10345-KM-ESK, (Doc. 37, filed Jun. 30, 2021). Previously reported in MCLU Vol. 158.

RECENTLY FILED ACTIONS

Member seeks ERISA benefits for unspecified treatment where reason for denial is not stated.

Member seeks ERISA benefits associated with residential treatment at Chrysalis and asserts violations of MHPAEA. The claim was partially denied for lack of precertification and partially denied as not medically necessary.

Removed action in which OON facility seeks benefits and asserts underpayment associated with treatment of four patients. The difference between billed charges and paid amounts on the four claims exceeds \$500,000. Another action filed by this provider reported *infra*.

Removed action in which OON facility seeks benefits and asserts underpayment associated with treatment of six patients. The difference between billed charges and paid amounts on the six claims exceeds \$1.35 million.

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RECENTLY FILED ACTIONS

Removed action in which third-party plaintiff member seeks ERISA benefits associated with back surgery after being balance billed by hospital. Member alleges that the surgery was preapproved, but that payment was withdrawn following payment. The grounds for the withdrawal of payment are not stated in the underlying complaint. **DISCLOSURE – I represent the third-party defendant.**

Putative class action in which plastic surgeon and alleged assignee challenges the “unlawful acts of [] to systematically deny benefits for post-mastectomy breast reconstruction when performed by assistant surgeons or co-surgeons.” Plaintiff asserts [] has a uniform policy of denying “DIEP flap microsurgery when the performing surgeons work as either assistant surgeons or co-surgeons.”

Member seeks ERISA benefits associated with residential inpatient treatment at Trails Carolina and Maple Lake Academy for Boys and asserts violations of MHPAEA. The Trails claim was denied because the “procedure code submitted was not eligible for payment.” The Maple Lake claim was denied for failure to meet “the Optum clinical criteria for that Level of Care.”

Removed action in which OON facility seeks benefits associated with surgery to member. Billed charges were \$344,282 and the amount paid was \$2,696.50. The basis of payment is not stated in the underlying complaint. Plaintiff asserts causes of action for negligent misrepresentation and breach of contract.

Member seeks ERISA benefits from self-funded plan associated with residential sub-acute treatment at Second Nature Blue Ridge and Maple Lake Academy. The Second Nature claim was denied as an experimental or unproven wilderness program. The Maple Lake claim was denied on the grounds the facility is a “therapeutic boarding school” that does not provide clinical Mental Health Residential Treatment.

OON physician seeks ERISA benefits and alleges underpayment on two claims associated with surgical treatment. Billed charges on the first claim were \$14,725 and the amount paid was \$2,615.36. Billed charges on the second claim were \$3,000 and the amount paid was \$732.78. Other actions filed by this provider reported in **MCLU Vol. 82, 95, 147, 178.**

Removed action in which air ambulance provider seeks \$7.8 million in claims associated with services to members “enrolled in []’s Medicaid managed care plans, commercial plans, preferred provider organization plans and Medicare health maintenance organization plans that are issued, operated and/or administered by [].” The complaint was removed on the grounds the claims are preempted by the Airline Deregulation Act.

Member seeks ERISA benefits from self-funded plan associated with residential inpatient treatment at Solstice East and Innercept LLC and alleges violations of the MHPAEA. The Solstice claim was denied as not medically necessary pursuant to the MCG guideline Residential Behavioral Health Level of Care, Child or Adolescent. The Innercept claim was also denied as not medically necessary.

Member seeks ERISA benefits from self-funded plan associated with residential treatment at Open Sky Wilderness Therapy and alleges violations of MHPAEA. The claim was denied on the grounds that wilderness programs are excluded.

Laboratory which is in-network for group plans but OON for Medicaid and Medicare Advantage plans challenges overpayment assertion of \$1,032,455.04. Plaintiff alleges the assessment was based on two small audits using statistically invalid methods.

Member seeks over \$125,000 in ERISA benefits associated with residential treatment at Outback Therapeutic Expeditions and Monuments Academy. The claims were denied because “neither facility meets our requirements for a Residential Treatment Center.”

Member seeks over \$90,000 in ERISA benefits associated with residential treatment at New Haven. After a period of coverage, the claim was denied for failure to continue to meet the Cigna Behavioral Medical Necessity Criteria for Residential Mental Health Treatment for Children and Adolescents.

Member seeks over \$135,000 in ERISA benefits from self-funded plan associated with residential treatment at Evoke at Entrada and Crossroads Academy. The Evoke claim was denied on the grounds “non-medical counseling services are excluded.” Coverage at Crossroads was provided from October 3, 2018 through October 13, 2018 but denied thereafter on the grounds the symptoms no longer meet the [] Behavioral Medical Necessity Criteria for Residential Mental Health Treatment for Children and Adolescents.

OON laboratory seeks benefits associated with Covid testing services and alleges violations of the FFCRA and the CARES Act. Plaintiff asserts mis-adjudication of claims and wrongful denials and seeks relief under RICO and ERISA, among others.

Member asserts putative class action challenging plan’s alleged “standardized practice of excluding from coverage proton beam therapy for the treatment of prostate cancer.” Plaintiff’s claim was denied as not medically necessary.

OON physician and alleged assignee seeks ERISA benefits and alleges underpayment will emergency laparoscopic appendectomy. Billed charges were \$46,131.75 and the amount paid was \$1,089.85.

Removed action in which OON orthopedic surgeon seeks ERISA benefits and alleges underpayment for treatment including “posterior decompression, L3-L4 and L4-L5 with posterior fusion with ILIF instrumentation and bone graft.” Billed charges of the primary and assistant surgeon were \$188,440 and the amount paid was \$2,984.63.

ADDITIONAL NEWSWORTHY (REGULATORY)

Texas legislature amends the state’s prior authorization (PA) requirements, notably adding explicit exemptions from PA chapter for certain types of plans and additionally crafting an exemption from a plan’s PA requirements when certain conditions are met, for example, if 90% of the physician’s PAs to the plan had been approved over the prior 6 months. 2021 Tex. Sess. Law Ch. 1018 (H.B. 3459) (filed Jun. 18, 2021).

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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-DER, (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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