

Managed Care Litigation Update®

NEWSWORTHY

Fourth Circuit reverses in part and remands grant of summary judgment in favor of ERISA plan administrator where it found that member's breach of fiduciary duty claim should have survived. Member alleged administrator inappropriately passed certain administrative expenses to members by bundling those expenses with medical expenses. *Sandra M. Peters v. Aetna, Inc., et al.*, USAC 4th Cir., No. 19-2085 (Doc. 90, filed Jun. 22, 2021).

District court grants CIGNA summary judgment in suit by provider who treated over 180 former NFL players where reason for blanket denial was that injuries were an occupational injury excluded from coverage under ERISA plan. *Advanced Physicians, S.C. v. Connecticut General Life Insurance Company, et al.*, USDC ND TX, No. 3:16-cv-2355-G-BT, (Doc. 247, filed Jul. 8, 2021). Previously reported in *MCLU Vol. 62*.

District court grants Bayer's motion to dismiss BCBS LA's claims that the advertising and safety information provided by the Defendants did not adequately warn of the risk of serious and fatal bleeding. The court concluded BCBS LA could not establish causation between the failure to warn and the coverage of prescriptions dispensed to their insureds. *Louisiana Health Serv. and Indem. Co., et al. v. Janssen Research & Dev. LLC, et al.*, USDC ED LA, No. 2:15-3913, (opinion docketed as Doc. 17983 on Ju. 8, 2021 in *In re Xarelto (Rivaroxaban) Products Liability Litigation*, USDC ED LA, 2:14-md-2592).

RECENTLY FILED ACTIONS

Removed action in which OON emergency care providers seek benefits and allege underpayment and wrongful denials associated with treatment of 56 members. Other actions by this provider reported in *MCLU Vol. 139, 141, 143, 147, 148, 149, 165, 174*.

Member seeks ERISA benefits associated with unspecified treatment and asserts she is excused from exhausting her administrative remedies because of the plan's failure to respond to her appeal. The basis of denial is not identified in the complaint.

Removed action in which surgeon appearing pro se seeks ERISA benefits for two surgeries performed where the claims were denied. The underlying complaint does not identify the bases for denial.

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RECENTLY FILED ACTIONS

Member, an adult transitioning female, seeks benefits associated with “revision facial feminization surgery (RFFS).” The basis for denial of the claim is not alleged in the complaint. Similar claim filed by this member reported in *MCLU Vol. 171*.

Member seeks over \$100,000 in ERISA benefits associated with residential inpatient care at Eva Carlston Academy and asserts violations of the MHPAEA. The claim was denied as not medically necessary applying the Interqual criteria.

Removed action in which OON plastic surgeon seeks \$263,754.90 in benefits associated with preauthorized breast reconstruction surgery. Total billed charges for primary and assistant surgeons were \$268,119 and the amount paid a total of \$4,364.10.

Member seeks over \$365,000 in ERISA benefits from self-insured plan associated with residential treatment at Triumph Youth Services. The claim was denied as not medically necessary.

OON plastic surgeon alleges underpayment associated with alleged emergency treatment provided to two members. Billed charges on the first member were \$12,545 and the amount paid was \$3,583.44, and billed charges on the second member were \$5,880 and the amount paid was \$1,774.89. Other actions by this provider reported in *MCLU Vol. 118, 124, 137, 138, 145, 147, 148, 152, 160, 165, 171*.

Removed action in which member seeks approximately \$320,000 in benefits for treatment associated with motor vehicle accident. Grounds for denial are not stated in the underlying complaint.

Removed action in which ambulatory surgery center and alleged assignee seeks over \$50,000 in benefits associated with “Right Anterior Total Hip replacement aided by fluoroscopy” and asserts only \$90.35 has been paid to date.

Removed action in which family medicine physician challenges overpayment assessment where physician participates in the traditional network for PPOs but not the managed care network for OMNIA. When a union’s self-insured fund switched from a PPO plan to an exclusive OMNIA network that did not provide OON benefits, coverage provided to the plan’s members was no longer provided and an overpayment resulted.

Removed action in which physician seeks ERISA benefits from self-insured plan and alleges wrongful denial of \$11,617.79 claim associated with unspecified treatment of member. Grounds for denial are not stated in underlying complaint.

Removed action in which provider seeks ERISA benefits from self-funded plan by filing “Statement of Claim” for account stated. Services provided and basis of denial are not apparent from unsealed filings.

Removed action in which member seeks \$2,770.06 in ERISA benefits from self-funded plan associated with Trilogy breathing machine. Claim was allegedly denied after years of coverage on the grounds it was not medically necessary.

OON plastic surgeon seeks ERISA benefits and asserts underpayment associated with treatment of 16-month-old baby to treat cleft lip and nasal deformity. Billed charges were \$14,500 and the amount paid was \$4,058.32.

Member seeks ERISA benefits to cover son's inpatient mental health treatment at Villa Santa Maria. Plaintiff alleges violation of MHPAEA on grounds that the claim was denied because the facility was not accredited, but "no such accreditation requirement exists for skilled nursing facilities and other medical and surgical treatment."

Removed action in which member seeks ERISA benefits associated with claim for \$4,411.17 "bone stimulator to address the lack of healing post surgery" following a cervical spine fusion. Basis of denial is not stated in the underlying complaint.

Removed action in which member seeks benefits associated with proton beam radiation treatment for anal cancer. The basis of denial is not stated in the underlying petition.

OON plastic surgeon and alleged assignee seeks ERISA benefits and alleges underpayment associated with removal of tumor from abdomen. Plaintiff asserts he received an in-network exception, that billed charges were \$93,200, that the amount paid was \$3,025.30, and that coinsurance was \$756.33. Basis of payment was Medicare rates because the treatment was OON per the EOB. Other actions filed by this provider reported in *MCLU Vol. 82, 95, 147, 178, 179*.

Removed action in which member challenges denial of PA for surgical intervention to treat back pain. Provider performed the approved procedures but did not perform the surgical intervention that was not approved, and member asserts pain is continuing.

Removed action in which member seeks ERISA benefits for emergency treatment received following a car accident. Plaintiff asserts a claim of \$5,381.20 for diagnostic services has not been paid. Grounds for denial are not stated in the underlying complaint.

CIGNA seeks recoupment of \$4,680,683.19 paid for ESRD claims to provider following termination of provider's ESRD facility license.

Member seeks ERISA benefits associated with residential treatment at View Point Center and alleges violation of MHPAEA. The claim was denied as not medically necessary pursuant to the LOCAT criteria.

Removed action in which OON emergency services physician seeks benefits from EPO for treatment provided to member. Billed charges were \$1,422.44 and amount paid was \$166.48.

Removed action in which hospital seeks \$151,461.85 in benefits associated with treatment of three patients and alleges plan failed to “properly reimburse” plaintiff. Basis of payment and amount of payment are not identified in underlying complaint.

Member seeks \$126,750 in ERISA benefits associated with residential treatment at Uinta Academy Residential Treatment Center. The claim was denied as an excluded benefit, but plaintiff asserts residential mental health treatment is a covered benefit.

Member seeks ERISA benefits associated with repair of previously implanted DRG stimulator. Claim was denied on the grounds DRG stimulation is not covered under the plan.

Removed action in which member challenges ERISA subrogation lien following motor vehicle accident and alleges plan refuses to produce supporting documentation.

ADDITIONAL NEWSWORTHY (REGULATORY)

US DHHS issues first set of regulations implementing the No Surprises Act, prohibiting balance billing with few exceptions. The regulations notably address OON air ambulance billing disputes. Requirements Related to Surprise Billing; Part I, 86 FR 36872-01, 2021 WL 2915228.

[Mitchell Hasenkampf](#) leads the firm’s compliance practice group, which advises clients on matters including utilization review and prompt pay requirements for government and commercial plans, Member incentives, marketing and member communications, and Grievance and Appeal processes.

MCLU is online and searchable.

The underlying database to this publication, containing over 3,000 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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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



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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