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Managed Care Litigation Update®

NEWSWORTHY

District court grants plan's motion for summary judgment and applied 2-year statute of limitations in dismissing hospital's claim for underpayment, holding that the SOL began to run upon receipt of a letter indicating the plan was denying benefits for inpatient treatment. *Stanford Health Care v. USABLE Mutual Insurance Co.*, USDC ND CA, No. 4:21-cv-550-PJH, (Doc. 35, filed Jul. 13, 2021).

District court grants summary judgment to ERISA plan dismissing claims for residential mental health benefits and violations of MHPAEA. In a 44-page opinion, the court agreed the denial was supported by the administrative record. *Kevin D., et al. v. Blue Cross and Blue Shield of South Carolina, et al.*, USDC MD TN, No. 3:19-cv-934, (Doc. 64, filed Jun. 23, 2021) (NOA filed Jul. 22, 2021).

District court concludes cross-plan offsets violate ERISA while also partially granting Aetna's MSJ enforcing the plan's anti-assignment provisions. *Lutz Surgical Partners PLLC, et al. v. Aetna, Inc., et al.*, USDC D. NJ, No. 3:15-cv-2595-ZNQ-TJB, (Doc. 202, filed Jun. 21, 2021).

District court grants member summary judgment in holding the denial of residential ERISA benefits was arbitrary and capricious and awards costs of treatment in lieu of remand, along with plaintiff's attorney fees. *D.K., et al. v. United Behavioral Health, et al.*, USDC D. UT, No. 2:17-cv-1328-DAK, (Doc. 96, filed Jun. 22, 2021) (NOA filed Jul. 21, 2021).

RECENTLY FILED ACTIONS

Member seeks ERISA benefits associated with residential treatment for an eating disorder at Avalon Hills Treatment Center. Coverage was approved from May 4, 2020 to June 1, 2020 but denied thereafter as not medically necessary.

[ ] seeks recoupment of "at least $18.7 million" in alleged overpayments associated with fraudulent billing of DME. [ ] asserts defendant engaged in phantom billing, submitted claims that were not medically necessary, and waived patient's cost-sharing obligations.

Plan seeks recoupment and alleges lab misrepresented its "cash rate" for purposes of reimbursement for COVID testing pursuant to the CARES Act. Plan asserts that persons who attempted to pay with cash were turned away initially, and subsequently those who attempted to pay with cash were offered rates at a fraction of the posted "cash rate," which was one of two metrics plans were required to use for reimbursement.

RECENTLY FILED ACTIONS

Removed action in which OON long-term acute care hospital seeks $1,718,324.44 in benefits from Medicaid and Medicare managed care plans. Plaintiff asserts plans failed to pay the rates agreed to during the pre-approval process.

Member seeks approximately $70,000 in ERISA benefits and alleges plan failed to advise him that Medicare benefits would become primary whether or not he enrolled. Plaintiff further states the Summary Plan Description was deficient.

Interpleader action in which member is contesting subrogation claim in amount of $7,199.35 pertaining to personal injury settlement.

[ ] seeks recoupment on behalf of MA and Part D plans and alleges drug manufacturer operated an illegal kickback scheme involving a sham charity that covered cost-sharing obligations of members. The complaint asserts prior FCA enforcement action of the DoJ based on the same alleged conduct.

Member seeks ERISA benefits associated with residential inpatient treatment at Aspiro Wilderness Adventure Therapy and Telos Residential Treatment Center. The Aspiro claim was denied as not covered per the EOB, and the appeal was rejected as untimely. The Telos claim was denied on the grounds that Telos "is not a covered provider type."

Member seeks ERISA benefits associated with inpatient treatment at Utah Neuropsychiatric Institute. Coverage was provided from February 15, 2019 to March 5, 2019 but denied thereafter on the grounds a lower level of care was appropriate pursuant to the MCG guideline Inpatient Behavioral Health Level of Care, Child or Adolescent.

Removed action in which member seeks benefits associated with brain surgery. The request for prior authorization had been denied as not medically necessary and a request for expedited appeal was denied.

Removed action in which member seeks ERISA benefits associated with emergency treatment for sciatica. Member's group plan is alleged to be secondary to Medicare Part B benefits, regardless of whether member enrolls in Part B.

Member seeks ERISA benefits associated with physical therapy to treat "strain and segmental dysfunction in various muscles." After member's deductible was reached, member asserts the claims for continued physical therapy were denied as not medically necessary.

[ ] seeks to recoup over $100 million in alleged scheme to target those "who have favorable coverage for out-of-network benefits" and waiving cost-sharing obligations, particularly for "opioid-free pain-management solutions through experimental and medically unproven therapies."

Putative class action in which pro se Medicaid managed care plan member asserts wrongful denial of treatments associated with gender dysphoria. Plaintiff additionally asserts history of grievance complaints as evidence of abusive conduct.

Member seeks ERISA benefits associated with residential treatment at Open Sky Wilderness Therapy. The claim was denied on the grounds the facility does not meet the plan's definition of "Residential Treatment Center," but member disputes this interpretation and alleges violations of MHPAEA.

Removed action in which pro se physician seeks $55,500 in ERISA benefits associated with alleged emergency surgeries. The basis for denial or partial payment is not stated in the underlying complaint.

Removed action in which pro se member seeks $1,178.87 in ERISA benefits. The treatment and basis for denial were not identified in the underlying complaint.

Member seeks over $96,000 in ERISA benefits associated with mental health residential treatment received at Optimum Performance Institute ("OPI") and The Sanctuary at Sedona ("Sedona"). The OPI claim was denied on the grounds it "does not have a behavioral health provider actively on duty" 24/7. The Sedona claim was denied on the basis it was not properly licensed and credentialed.

Member seeks $30,336.69 in ERISA benefits associated with right hip surgery. The claim was denied as not medically necessary on the grounds there was not a record of conservative treatment prior to the surgery.

Removed action in which member seeks MA benefits associated with "recommended and medically indicated prosthesis." The underlying complaint does not identify the grounds for denial.

Putative class action in which member challenges "[ ]'s practice of improperly denying claims for Coflex, and interlaminar stabilization device."

Member seeks ERISA benefits associated with residential treatment at Change Academy Lake of the Ozarks. Coverage was provided from June 18, 2019 to June 26, 2019 but denied thereafter as not medically necessary.

Removed action in which hospital seeks benefits and asserts underpayment associated with surgeries. Billed charges on patient 1 is $113,100 and the amount paid was $9,761.90. Billed charges on patient 2 were $145,993 and the amount paid was $2,319.86. Anther action by this provider reported at *MCLU Vol. 179*.

Member seeks over $215,000 in ERISA benefits associated with residential treatment at Trails Carolina and Uinta Academy. The Trails claim was denied on the grounds it is an excluded Wilderness Therapy program. The Uinta claim was denied as not medically necessary pursuant to the Cigna Behavioral Medical Necessity Criteria for Residential Mental Health Treatment for Children and Adolescents.

ADDITIONAL NEWSWORTHY (REGULATORY)

Illinois Legislature amends its Network Adequacy requirements to include more specific and extensive requirements pertaining to treatment of mental health and substance use disorder. 2021 Ill. Legis. Serv. P.A. 102-144 (S.B. 471) (West) (approved Jul. 23, 2021).

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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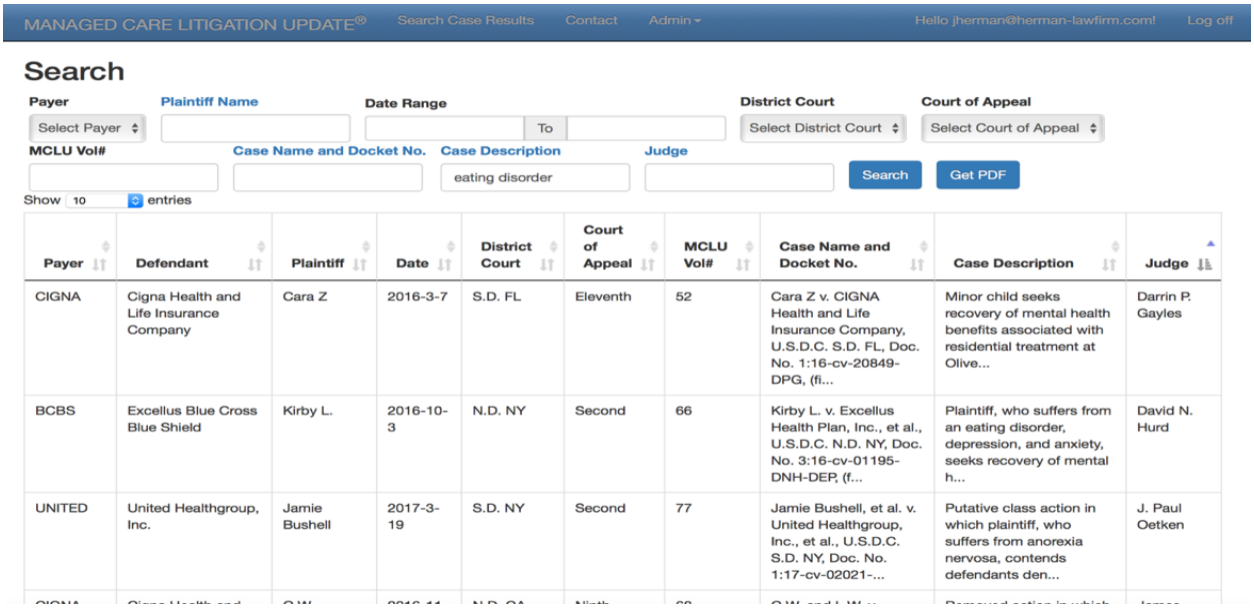

Payer	Defendant	Plaintiff	Date	District Court	Court of Appeal	MCLU Vol#	Case Name and Docket No.	Case Description	Judge
CIGNA	Cigna Health and Life Insurance Company	Cara Z	2016-3-7	S.D. FL	Eleventh	52	Cara Z v. CIGNA Health and Life Insurance Company, U.S.D.C. S.D. FL, Doc. No. 1:16-cv-20849-DPG, (fi...	Minor child seeks recovery of mental health benefits associated with residential treatment at Olive...	Darrin P. Gayles
BCBS	Excellus Blue Cross Blue Shield	Kirby L.	2016-10-3	N.D. NY	Second	66	Kirby L. v. Excellus 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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