

Managed Care Litigation Update[®]

NEWSWORTHY

District court dismisses ERISA claim of air ambulance and determines “the defendant’s determination that the transport to Madison, Wisconsin was not medically necessary, as it was ‘primarily for the convenience of the patient [or the] patient’s caregiver(s)’ [], and that it was not to the ‘nearest medically appropriate facility to treat [her] illness or injury’ [] is supported by substantial evidence.” *Aerocare Medical Transport System, Inc., et al. v. Tractor Supply Company, et al.*, USDC MD TN, No. 3:20-cv-179, (Doc. 61, filed Aug. 4, 2021).

District court dismisses claims of plans associated with marketing and distribution of Suboxone after determining Humana and Centene lack standing to assert RICO claims under the indirect payer rule. *Humana v. Invidior, Inc., et al.*, USDC ED PA, No. 2:20-cv-4602-MSJ, (Doc. 85, filed Jul. 22, 2021) (NOA filed Aug. 20, 2021).

Seventh Circuit reverses dismissal and revives False Claims case alleging MCO failed to provide Skilled Nursing Facility services that it contracted to provide. The court determined the lack of a SNF provider was material despite the contract being renewed after Medicaid agency knew about the lack of contracted SNF providers. *United States ex rel. Thomas Prose v. Molina Healthcare of Illinois, Inc., et al.*, USAC 7th Cir., No. 20-2243, 2021 WL 3671433 (Doc. 43, filed Aug. 19, 2021).

RECENTLY FILED ACTIONS

Removed action in which pro se member seeks ERISA benefits associated with 10-week hospitalization for heart condition. Plaintiff alleges his health insurance had been cancelled because he “was not actively at work” with his employer.

Liquidating plan trustee seeks over \$12 million in alleged overpayments made by TPA to providers. Plaintiff further alleges records show that the TPA “overcharged or failed to credit millions of dollars in overbillings” to the plan.

[] seeks to recover \$3.5 million following breach of settlement agreement concerning overpayment.

Member challenges ERISA lien for health benefits following automobile accident. The basis of the challenge is the Michigan No-Fault Act.

Member seeks ERISA benefits associated with residential mental health treatment at Innercept. The claim was denied for failure to meet the level of care guidelines.

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RECENTLY FILED ACTIONS

Member seeks ERISA benefits associated with proton beam radiation therapy for cancer and alleges [] has a uniform policy to deny PBT. The claim was denied for lack of medical necessity “per MCG A0389.”

Pro se member alleges litany of claims associated with unspecified denials and challenges obtaining referrals.

TPA seeks determination that it is not required to arbitrate provider dispute with ERISA plan pursuant to “Transition and Termination Network and Claims Processing Services Agreement.”

Putative class action in which member challenges “[]’s adoption and use of certain clinical coverage criteria to determine whether residential treatment of mental health conditions and/or substance use disorders ... was medically necessary.”

Member seeks benefits associated with treatment for Burkitt’s Lymphoma and alleges various treatments were denied as out of network.

OON chiropractor seeks ERISA benefits associated with treatment of members of both [Insurer #1] and [Insurer #2] plans. Plaintiff challenges the denial and alleged underpayment of Nerve Conduction Studies. Other actions by this provider reported at *MCLU Vol. 60, 145, 146, 148, 169*.

Removed action in which *pro se* member seeks approximately \$5,000 in ERISA benefits associated with claim that was denied as not medically necessary and experimental. Details of the claim were redacted.

Member seeks ERISA benefits associated with Xyrem prescription to treat narcolepsy. Plaintiff asserts he had been on Xyrem for ten years and then a new claims administrator denied the treatment.

Member seeks benefits from a “school-sponsored health plan” associated with treatment for severe ulcerative colitis, particularly prescription Remicade. Plaintiff asserts he was identified as a high-cost outlier and subsequently subjected to denials and non-contractual PA requirements.

OON plastic surgeon seeks benefits and alleges underpayment associated with a double mastectomy and associated procedures following breast cancer diagnosis. Total charges for the two surgeries were \$200,062.50 and the amount paid was \$5,204.32.

Member seeks ERISA benefits associated with residential treatment at Aspiro Adventure, LLC and Kaizen Academy. As against [Insurer #1], the Aspiro claim was denied as both an experimental wilderness therapy and as medically unnecessary. The Kaizen claim was denied as not medically necessary pursuant to the [] Level of Care Guideline for the Mental Health Residential Treatment Center Level of Care. As against [Insurer #2], the claim was denied on the grounds Kaizen Academy did not meet the plan definition of Residential Treatment Center. Plaintiff alleges violation of MHPAEA.

Member seeks approximately \$40,000 in benefits from both an ERISA plan and a non-ERISA plan associated with treatment of newborn. The [Insurer #1] claim was denied for lack of information pertaining to COB and the [Insurer #2] claim was denied for lack of dependent coverage.

Member seeks ERISA benefits from self-funded plan associated with residential treatment at Elevations Residential Treatment Center. Coverage was provided from January 16, 2018 through February 26, 2018 but denied thereafter as not medically necessary pursuant to the [] Level of Care Guideline for Mental Health Residential Treatment Center Level of Care.

Removed action in which OON provider of treatment of Autism Spectrum Disorder seeks “no less than \$407,609.56” in benefits and alleges the pre-approvals as contracts. Plaintiff asserts wrongful denials and partial payments.

Removed action in which OON plastic surgeon seeks \$24,468 in ERISA benefits associated with allegedly pre-approved surgical wound care. Plaintiff asserts nothing has been paid two years after the claim. Other actions by this provider reported at *MCLU Vol. 151, 169, 170, 175*.

Member seeks over \$120,000 in ERISA benefits associated with residential treatment at Blue Ridge Wilderness and Solacium Sunrise. Both claims were denied by [Insurer #1] as not medically necessary pursuant to the Behavioral Health Medical Necessity Criteria for admission and continued stay at Residential Mental Health Treatment for Children and Adolescents level of care. The claim was denied as not medically necessary by [Insurer #2] pursuant to the Medical Necessity Criteria for Psychiatric Residential Criteria.

Removed action in which OON facility seeks ERISA benefits and asserts underpayment associated with preauthorized procedure. Billed charges were \$229,985 and the amount paid was \$898.51. Other actions by this provider reported in *MCLU Vol. 179*.

Member seeks over \$239,000 in ERISA benefits associated with residential treatment at Change Academy Lake of the Ozarks. The claim was denied as not medically necessary.

Member seeks ERISA benefits associated with skilled nursing care for daughter with Aromatic L-amino Acid Decarboxylase Deficiency. Plaintiff asserts that coverage had previously been provided but is now being denied as custodial.

Member seeks over \$70,000 in ERISA benefits associated with residential treatment at Turn About Ranch, Inc. and asserts violations of MHPAEA. The claim was denied as not meeting the UBH Level of Care Guidelines for the Mental Health Residential Center Level of Care.

ADDITIONAL NEWSWORTHY (REGULATORY)

Illinois legislature amends its behavioral health provisions to require that, “for any medical necessity determinations relating to level of care placement . . . an insurer shall apply the patient placement criteria set forth in the most recent version of the treatment criteria developed by an unaffiliated nonprofit professional association.” 2021 Ill. Legis. Serv. P.A. 102-579 (H.B.2595) (approved Aug. 25, 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.

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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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