

Managed Care Litigation Update®

NEWSWORTHY

District Court grants plan's MPSJ agreeing that ERISA preempts contract claims based on pre-authorization communications. "[T]he In-Network Exceptions do not provide a rate of payment; rather they implicate a right to benefits available under the Plans." **Alireza Sadeghi, M.D., et al. v. Aetna Life Insurance Company, USDC. MD LA, No. 3:20-cv-445-SSD-EWD, (Doc. 50, filed Sept. 28, 2021).** See also **MCLU Vol. 155. DISCLOSURE: I represented the prevailing party.**

District court grants in part and denies in part motion for judicial review following remand, awarding Plaintiff \$32,028.16 in mental health benefits where \$83,554.55 had already been paid. The Court concluded BCBS's payment of CPT Code 1001 was reasonable where the billed charges included charges for days that the member was not present. **Change Academy. L.P. v. BCBSM, Inc., USDC D MN, No. 0:18-cv-1241-MJD-DTS, (Doc. 110, filed Sept. 21, 2021).** See also **MCLU Vol. 104.**

Fifth Circuit reverses lower court and grants ERISA plan's MSJ affirming denial of mental health benefits for months-long residential stay, holding there was substantial evidence to support its denial of benefits and the "denial 'may not be correct, but we cannot say it was arbitrary.'" **Michael J.P. v. Blue Cross and Blue Shield of Texas, et al., USAC 5th Cir., No. 20-30361, (Doc. 0051602016, filed Sept. 22, 2021).**

ERISA plan's MSJ granted predicated on Anti-Assignment clause. **Atlantic Neurosurgical Specialists, PA v. Anthem Blue Cross and Blue Shield, et al., USDC D NJ, No. 2:20-cv-10415-CCC-MF, (Doc. 23, filed Sept. 10, 2021).** See also **MCLU Vol. 158.**

RECENTLY FILED ACTIONS

OON provider of psychiatry services seeks \$1,723,550 in denied ERISA benefits and challenges determination of overpayment in the amount of \$521,119.69. Plaintiff asserts it has been improperly flagged and required to submit medical records in support of every claim.

Adversary complaint in which debtor plan seeks to enjoin termination of master services agreement with third-party administrator where debtor alleges [] is attempting to drive debtor into default as a pretext to terminate the MSA.

Member seeks ERISA benefits associated with residential treatment at SUWS of the Carolinas and Dragonfly Transitions and alleges violations of the MHPAEA. The SUWS claim was denied as experimental/investigational under [] Coverage Policy Complementary and Alternative Medicine. The Dragonfly claim was denied as not medically necessary pursuant to the Behavioral Health Medical Necessity Criteria for admission and continued stay at the Residential Mental Health Treatment for Adults level of care.

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RECENTLY FILED ACTIONS

Member seeks ERISA benefits associated with residential treatment at Open Sky Wilderness Therapy and at Vista Adolescent Treatment Center. The Open Sky claim was denied pursuant to a “Wilderness camps” exclusion, and the Vista claim was denied on the grounds Vista lacks accreditation.

Removed action in which group of hospitals allege prompt pay violations as a result of alleged coordination of benefits mistakes in which [] reimbursed New York State for claims mistakenly billed to Medicaid when [] was the primary payor.

Removed action in which OON orthopedic group alleges underpayment associated with pre-authorized complete facetectomy and stabilization with a complete discectomy. Billed charges were \$269,859.50 and the amount paid was \$4,671.36. Other actions filed by this provider and reported in *MCLU Vol. 91, 93, 122, 124, 155, 161, 178*.

Member seeks COBRA benefits associated with treatment for kidney transplant for ESRD. Member asserts the claim was denied or underpaid on the grounds Medicare should have been the primary payor and that the COBRA benefits were secondary.

Putative class action in which member challenges []’s mental health coverage as in violation of MHPAEA. The member’s claim for residential treatment at Daniels Academy was denied on the grounds “a behavioral provider is not actively on duty 24 hours per day for 7 days a week” and “The patient is not treated by a psychiatrist at least once per week.”

Former member seeks COBRA benefits and asserts he was wrongfully terminated and never provided opportunity to enroll in COBRA.

Member seeks ERISA benefits associated with residential mental health treatment at New Haven. Coverage was provided by a prior insurer from September 22, 2018 through October 3, 2018 but denied by [] from October 4 forward for lack of medical necessity pursuant to the clinical guideline Psychiatric Disorder Treatment – Residential Treatment Center (RTC) CG-BEH-03H.

Member seeks benefits associated with substance abuse treatment at The Manor. Plaintiff alleges the plan has refused to make payment on grounds it has incomplete information, but plaintiff avers the information has been provided multiple times.

Removed action in which OON neurosurgeon seeks ERISA benefits and asserts underpayment associated with nonemergency intraoperative monitoring services. Billed charges were \$26,625 and the amount paid was \$938.84.

Member seeks ERISA benefits from a self-funded plan associated with residential treatment at Vista Manga and asserts violations of MHPAEA. Coverage was provided from January 23, 2020 through March 23, 2020 but denied thereafter for lack of medical necessity pursuant to the MCG guideline Residential Behavioral Health Level of Care, Child or Adolescent.

OON physician seeks benefits and alleges under-reimbursement associated with preauthorized knee surgery. Billed charges were \$197,937.25 and the amount paid was \$480.13. Plaintiff asserts the billed charges were inappropriately bundled.

Removed action in which OON surgery group seeks over \$400,000 in benefits and alleges underpayment associated with various claims. Plaintiff asserts its billed charges are the UCR.

Member challenges ERISA lien associated with medical malpractice claim and subsequent legal malpractice claim.

Removed putative class action in which anesthesiologist group and group of members being balance-billed seek benefits and allege underpayment. Anesthesiology group left the network in March of 2020 and the claims all pertain to OON reimbursements made after that termination.

Removed action in which various OON physician groups and alleged assignees seek more than \$23 million in benefits associated with claims denied or underpaid during a "CAMU Audit," which "is a pre-payment medical necessity audit performed by the [] Clinical Analysis and Monitoring Unit."

Adversary claim in which [] seeks repayment from debtor following revelation that non-physician debtor had illegally owned and operated medical practice.

Member seeks ERISA benefits associated with air ambulance transportation from Gundersen Palmer Lutheran Hospital and Clinic to Gundersen Lutheran Medical Center in LaCrosse, Wisconsin for a higher level of care. The claim was denied as not medically necessary.

ADDITIONAL NEWSWORTHY (REGULATORY)

DHHS and other departments issue proposed rule requiring reporting of air ambulance rates by providers, plans, and issuers. The reporting is proposed to include, among other elements, submitted charges, amounts paid, and cost sharing. The rules implement a portion of the No Surprises Act and may be codified at 45 CFR § 149.10 et seq and 45 CFR § 150.101 et seq. Requirements Related to Air Ambulance Services, Agent and Broker Disclosures, and Provider Enforcement, 86 Fed. Reg. 51730-01, (published Sept. 16, 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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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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