

Managed Care Litigation Update®

NEWSWORTHY

District court dismisses with prejudice RICO claims against plans associated with claims that the plans conspired in denying and auditing claims of residential mental health treatment facilities leading to a federal raid and bad press, and ultimately the closure of the businesses. The court determined the causation allegations were too attenuated. *Dual Diagnosis Treatment Center, Inc., et al. v. Centene Corp., et al.*, USDC CD CA, No. 2:20-cv-4112-SB-PVC, (Doc. 115, filed Aug. 10, 2021) (NOA filed Sept. 3, 2021). Previously reported in MCLU Vol. 152.

District court grants ERISA administrator's motion to dismiss and compel arbitration of claims by self-funded union plan that CIGNA breached its fiduciary duties by overpaying providers and engaging in self-dealing. *Local 640 Trustees of IBEW and Arizona Chapter NECA Health and Welfare Trust Fund v. CIGNA Health and Life Insurance Company*, USDC D. AZ, No. 2:20-cv-1260-MTL, (Doc. 42, filed Aug. 2, 2021) (NOA filed Aug. 30, 2021). Previously reported in MCLU Vol. 155.

District court affirms the denial of OON residential mental health benefits where the request for prior authorization was denied prior to admission. Plaintiff asserted that OON coverage should have been provided because no in-network provider was willing to treat plaintiff's complex conditions, but the court agreed with the plan that no evidence was provided to support that contention. *Bergeron v. HMO Louisiana, Inc.*, USDC ED LA, No. 2:20-cv-1450, NJB-DMD, (Doc. 41, filed Sept. Jul. 27, 2021).

RECENTLY FILED ACTIONS

Member seeks ERISA benefits from self-funded plan associated with residential treatment at Elevations Residential Treatment Center. Coverage was provided from December 7, 2018 through February 10, 2019 but denied thereafter as not medically necessary pursuant to the [] Level of Care Guidelines.

Removed action in which facility seeks \$306,149.88 in benefits associated with surgery. Plaintiff asserts "Defendant processed the bill and made a payment of \$0.00."

Putative class action in which anesthesia group sues in its role as plan sponsor and asserts breach of fiduciary duty. In particular, plaintiff attacks certain alleged practices pertaining to []'s treatment of OON providers and particularly the "Shared Savings" program which allegedly permits [] to take a service fee associated with paying less than billed charges.

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RECENTLY FILED ACTIONS

Removed action in which provider of skilled nursing home care services seeks MA benefits associated with preauthorized services. Plaintiff asserts the claims are not being paid because [] asserts an overpayment for which plaintiff has not been permitted to contest.

Member seeks \$42,133.53 in ERISA benefits associated with lumbar spinal surgery and associated inpatient stay in Germany. The claim was denied as not medically necessary pursuant to the AIM Specialty Health Guideline titled "Lumbar Disc Arthroplasty [sic]."

Pediatric neurologists and alleged assignees seek ERISA benefits and allege underpayment of \$199,219.25 associated with emergency treatment of 4 members. For patient 1, billed charges for the primary surgeon were \$43,441 and the amount paid was \$31,801.75, and billed charges for the assistant surgeon were also \$43,441, and the amount paid was \$475.75.

Member seeks mental health benefits from ERISA plan associated with inpatient treatment at Daniels Academy Residential Treatment Center. [] covered the first 14 days of the treatment but the remainder was denied as not meeting the level of care guidelines.

Putative class action in which members being balance billed assert [] is underpaying OON benefits inconsistent with the plan terms. The complaint asserts that [] has vendor contracts with otherwise OON providers through vendors such as MultiPlan, but that [] frequently bypasses these vendor contract rates in "using alternate methodologies such as Medicare rates."

Removed action in which hospital asserts it has not been paid for hospitalization services provided to member. Nature of services, billed charges, and reason for nonpayment are not identified in underlying complaint. Other actions by this provider reported in *MCLU Vol. 164, 178*.

Removed action in which member seeks benefits from an ACA marketplace plan associated with Microwave Tumor ablation to treat pulmonary tumors. The request for prior authorization was denied on the grounds the treatment is experimental.

Member seeks ERISA benefits associated with residential treatment at Fulshear Ranch Academy and alleges violations of MHPAEA. The claim was denied as not meeting the [] Behavioral Medical Necessity Criteria for Residential Mental Health Treatment for Adults.

Member seeks ERISA benefits associated with residential treatment at Second Nature Therapeutic Program LLC and Chrysalis School. The Second Nature claim was denied as excluded as wilderness/outdoor services. The Chrysalis claim was denied as not meeting the Behavioral Health Medical Necessity Criteria.

Member seeks ERISA benefits associated with residential treatment at Avalon Hills to treat an eating disorder. The claim was denied on the grounds “[t]here are service components at this facility that are not consistent with [] Guidelines for this treatment” and “the facility used non evidence based treatments which have been documented to address your depression, OCD or eating disorder.”

Member seeks over \$110,000 in ERISA benefits associated with residential treatment at Elevations RTC and alleges violations of the MHPAEA. Coverage was provided from November 8, 2018 to May 17, 2019 but denied thereafter on the grounds “your care and recovery could continue [] in the Mental Health Partial Hospitalization Program setting.”

[] seeks to compel arbitration of reimbursement disputes involving pharmacies owned by The Choctaw Nation and in-network through the [] PBM.

OON neurologist and alleged assignee seeks \$317,872 in ERISA benefits associated with pre-approved lumbar spine fusion that was aborted due to hypotension. Plaintiff asserts the discontinued procedure should have been paid at 50% of the fee schedule.

Putative class action in which member challenges coverage of IUI and IVF fertility treatment for LGBTQ individuals. Plaintiff asserts []’s policy “requires individuals who cannot conceive through intercourse due to their sexual orientation or gender identity to pay out of pocket for 12 cycles of IUI before [] will provide them coverage for fertility treatments” and therefore it is discriminatory in violation of section 1557 of the ACA.

OON surgeon and alleged assignee seeks ERISA benefits and asserts underpayment associated with emergency laparoscopy. Billed charges were \$229,084.24 and the amount paid was \$6,399.80. The basis of payment is not stated in the complaint.

Removed action in which clinic asserts breach of contract, defamation, unfair trade practices, and tortious interference claims associated with []’s processing, denials, and communications with members associated with clinic’s use of BioFire Test.

ADDITIONAL NEWSWORTHY (REGULATORY)

Texas Department of Insurance implements new regulations on parity in mental health and substance use disorder benefits which are designed to closely track the federal rules found at 45 CFR § 146.136, 45 CFR § 146.121(b)(2)(iii), and 45 CFR § 147.160. 46 Tex. Reg. 5571 (effective Sept. 7, 2021), adopting proposed regulations published at 46 Tex. Reg. 1191 (published Feb. 19, 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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