

Managed Care Litigation Update®

NEWSWORTHY

District court grants summary judgment dismissing claims of member seeking reimbursement for balance bill paid to air ambulance provider in 2014. The bad faith and fraud claims were subject to a 2-yr statute of limitations, and the contract claim was subject to a 3-yr contractual limitations period. **Christina Terry v. Health Care Service Corp.**, USDC WD OK, No. 5:18-cv-415-PRW, (Doc. 174, filed Sept. 28, 2021) (NOA filed Oct. 28, 2021).

District court grants plaintiff summary judgment and awards benefits with prejudgment interest, attorneys' fees, and costs where self-funded ERISA plan had provided coverage for part of a stay at one residential treatment center and denied the entire claim for a second RTC. The court found that the denials addressed the member's medical necessity for mental health treatment but ignored the independent basis of the member's medical necessity for substance abuse treatment. **David P., et al. v. United Healthcare Insurance Company, et al.**, USDC D. UT, No. 2:19-cv-225-JNP-JCB, (Doc. 92, filed Sept. 29, 2021) (NOA filed Oct. 29, 2021). Previously reported in *MCLU Vol. 126*.

District court dismisses without prejudice underpayment claims of OON orthopedic surgeon on the grounds the complaint failed to specify which ERISA plan provisions entitled provider to additional compensation. **Advanced Orthopedics and Sports Medicine Institute v. Anthem Blue Cross Life and Health Insurance Company, et al.**, USDC D. NJ, No. 3:20-cv-13243-FLW-DEA, (Doc. 25, filed Oct. 18, 2021). Previously reported in *MCLU Vol. 161*.

RECENTLY FILED ACTIONS

Removed action in which ERISA plan's subrogation rights (judgment in the amount of \$301,000) are challenged in a concursus proceeding.

OON plastic surgery groups seeks benefits and alleges wrongful denial of claims involving CPT code 15734 for closure of complex surgical wounds. Plaintiff asserts that all other payers the practice deals with consider the procedure medically necessary.

OON gynecological practices seek \$10.7 million in benefits associated with facility fees for surgeries performed on outpatient basis. Plaintiffs also contest an overpayment demand of \$1,169,954.72.

LTAC facility and alleged assignee seeks ERISA benefits and alleges it is governed by a BCBS Member Provider Agreement. Plaintiff asserts the services were pre-approved but later denied as not medically necessary and asserting lack of certain documentation.

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RECENTLY FILED ACTIONS

Member seeks ERISA benefits associated with residential treatment at Elevations RTC and alleges violations of the MHPAEA. Coverage was provided from July 8, 2019 through August 13, 2019 but denied thereafter as no longer medically necessary pursuant to the 2018 InterQual Behavioral Health Subset: Child and Adolescent Psychiatry.

Removed action in which OON physician group alleges \$116,392.54 underpayment associated with preapproved treatment of C4-5 and C5-6 disk herniations. Billed charges were \$120,055 and the amount paid was \$3,662.46. Other actions filed by this provider reported in *MCLU Vol. 78, 81, 92, 93, 94, 96, 102, 107, 108, 109, 115, 116, 123*.

Removed action in which physician member of the Multiplan Extender Network Plan seeks ERISA benefits and alleges underpayment associated with Panniculectomy and Abdominoplasty. Billed charges were \$100,100 and the amount paid was \$17,163.53.

SEE ALSO:

- Removed action in which OON plastic surgeon seeks \$127,667 in alleged underpayments associated with treatment of member. Billed charges for the Reduction Mammoplasty were \$170,268 and the amount paid was \$40,601.
- Removed action in which OON plastic surgeon and alleged assignee seeks \$166,971 and alleges underpayment associated with reduction mammoplasty for which an in-network exception was granted. Billed charges were \$170,268 and the amount paid was \$3,296.83.
- Removed action in which OON plastic surgeon and alleged assignee seeks benefits and alleges underpayment associated with reduction mammoplasty and panniculectomy for which an in-network exception was granted. Billed charges were \$420,000 and the amount paid was \$12,987.53.

Member seeks ERISA benefits associated with residential mental health benefits. Plaintiff asserts coverage was provided for five days, during which the deductible was applied, and that the 55 remaining days were denied as not medically necessary.

[Health Insurer] asserts systematic upcoding of emergency claims by Team Health, for example the coding of treatment for providing Maalox to treat heartburn as “emergency medical care of particularly high complexity under exigent circumstances.” [] estimates over one hundred million dollars in overpayments.

Member seeks over \$160,000 in ERISA benefits from self-insured plan associated with residential treatment at Vista at Dimple Dell Canyon and alleges violations of MHPAEA. Coverage was provided from October 11, 2019 to October 18, 2019 but denied thereafter based on the [] Behavioral Health Medical Necessity Criteria for continued stay at Residential Mental Health Treatment for Children and Adolescents.

Member seeks over \$270,000 in ERISA benefits from self-insured plan associated with residential treatment at Elements Wilderness Program and Waypoint Academy. The Elements claim was denied on the grounds wilderness therapy is not proven to be safe and effective. The Waypoint claim was denied as not medically necessary pursuant to the [] Level of Care Guideline for the Mental Health Residential Treatment Center Level of Care and Common Criteria and Clinical Best Practices.

OON plastic surgeon seeks ERISA benefits and alleges underpayment associated with treatment of two members. Billed charges on the first patient were \$39,600 and the amount paid was \$6,641.88. Billed charges on the second claim were \$19,800 and the amount paid was \$6,641.88. Other claims by this provider reported at *MCLU Vols. 95, 130, 139, 147, 151, 162, 166, 180*.

Putative class action in which doctors and alleged assignees who are participants in []'s National Advantage Program ("NAP") allege systemic underpayment of NAP providers who administer third-party rental or wrapper networks.

ADDITIONAL NEWSWORTHY (REGULATORY)

Louisiana Department of Insurance issues emergency regulations restricting termination and non-renewal of policies for nonpayment, suspending credentialing requirements, and mandating certain telemedicine access coverage in response to Hurricane Ida. 47 La. Reg. 1481 (issued Oct. 20, 2021, retroactively effective to Sept. 24, 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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|--------|---|---------------|-----------|----------------|-----------------|-----------|---|---|------------------|
| 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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