

# Managed Care Litigation Update®

## NEWSWORTHY

California appellate court determines, in matter of first impression, that health plans do not have a legal duty compensable in tort “not to reimburse hospitals and other medical providers of emergency medical services at an amount less than the ‘reasonable and customary value’ of those services.” *Long Beach Memorial Med. Center, et al. v. Kaiser Foundation Health Plan, Inc., et al.*, CA 2<sup>nd</sup> Court of Appeal, No. B304183 and B306322, 2021 WL 5118888 (filed Nov. 4, 2021).

District court dismisses RICO claims involving allegations that United and Multiplan conspired to unlawfully manipulate reimbursement rates to ER physicians pursuant to a repricing methodology documented in internal whitepapers. *Emergency Physician Services of New York, et al. v. Unitedhealth Group, Inc., et al.*, USDC SDNY, No. 20-cv-9183-AJN-SN, (Doc. 65, filed Sept. 28, 2021). Previously reported in *MCLU Vol. 164*.

Texas appellate court concludes OON hospital does not have a private right of action to receive UCR from Medicaid or Marketplace plans. The court affirmed the dismissal of claims for breach of Tex. Ins. 1271.155, breach of contract, and unjust enrichment. *Dallas Med. Center, LLC, et al. v. Molina Healthcare of Texas, Inc.*, Court of Appeals of Texas—Dallas, No. 05-19-01583-CV, 2021 WL 5071830 (filed Nov. 2, 2021).

## RECENTLY FILED ACTIONS

Fully-insured [ ] ERISA plan seeks to enjoin regulatory decision from New Hampshire Insurance Department pertaining to New Hampshire’s fertility-treatment mandate where plan excludes such coverage.

Removed action in which OON provider seeks benefits and alleges underpayment associated with treatment of four members. Billed charges on patient 1 were \$80,000 and the amount paid was \$8,682.53; on patient 2, charges were \$60,000 and amount paid was \$1,054.70; on patient 3, charges were \$12,000 and amount paid was \$450.56; and on patient 4, charges were \$98,000 and the amount paid was \$13,319.67. Other actions by similarly named provider reported in *MCLU Vol. 47, 69, 92, 113, 114, 154, 159*.

OON surgical oncologist and alleged attorney-in-fact seeks benefits and alleges underpayment associated with pre-approved “extensive surgery ... including low anterior resection of rectosigmoid colon, extensive enterolysis, multiple small bowel enterorrhaphy, [and] appendectomy.” Billed charges were \$135,096.80 and the amount paid was \$2,939.27.

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## RECENTLY FILED ACTIONS

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Removed action in which OON provider seeks benefits and alleges underpayment or wrongful denial associated with “emergent surgical care.” Billed charges were \$114,293 and the amount paid was \$0.

Member seeks over \$200,000 in ERISA benefits from self-funded plan associated with residential treatment at Triumph Youth Services from November 3, 2018 through February 27, 2020. The claim was denied on the grounds “Facility is not accredited by The Joint Commission (TJC) or Commission on Accreditation of Rehabilitation Facilities (CARF); Medical Director is not a Psychiatrist.”

Removed action in which OON surgeon seeks ERISA benefits and alleges underpayment associated with surgery. Billed charges were \$112,500 and the amount paid was \$7,464.03. Other actions by this provider reported at *MCLU Vol. 97, 100, 102, 113, 128, 129, 165, 166, 167*.

Putative class action in which member challenges [ ]’s use of the 2018 and 2019 editions of the Level of Care Guidelines with respect to all ERISA plan members. Plaintiffs assert that the Guidelines are “more restrictive than the generally accepted standards.”

OON plastic surgeons allege underpayment associated with preauthorized “exceedingly complex, specialized, and difficult” breast reconstruction surgery involving DIEP flap. Billed charges from Dr. [ ] were \$238,000 and the amount paid was \$551.76, and billed charges for Dr. [ ] were \$238,000, and the amount paid was \$1,129.13.

Member seeks benefits associated with residential substance abuse treatment at Newport Academy and Visions Adolescent Treatment Center. Plaintiff asserts she never received a denial nor payment for the Newport claim but that the Visions claim was denied on the grounds no coverage is provided for that benefit.

Parents seek COBRA benefits associated with minor child’s pre-authorized eye surgery. Following initial coverage and payment, “Defendants reclaimed the payment from Plaintiffs’ medical providers, falsely claiming Plaintiffs did not elect COBRA, and/or otherwise did not have coverage.”

Removed action in which OON alleges underpayment associated with Reduction Mammoplasty. Billed charges were \$300,000 and the amount paid was \$6,873.85. Other actions by this provider reported at *MCLU Vol. 187*.

Member seeks approximately \$75,000 in ERISA benefits associated with planned bilateral temporomandibular joint replacement and upper jaw Leforte procedure. Preauthorization was denied on the grounds of Limitation and Exclusion No. 46, “services or supplies not specifically defined as Eligible Expenses in the Plan.”

Pediatric neurologists and alleged assignees seek ERISA benefits and allege underpayment associated with emergency treatment of member. Billed charges were \$57,342 and the amount paid was \$9,485. Other action by this provider reported at *MCLU Vol. 184*.

## ADDITIONAL NEWSWORTHY (REGULATORY)

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CMS modifies 2020 Hospital Price Transparency final rule to increase penalties for noncompliance, exempt state forensic hospitals from the requirements, and reduce technical barriers to the accessing of the required machine-readable file of standard charges. The modifications are codified at 45 CFR § 180.50. Medicare Program: Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems and Quality Reporting Programs; Price Transparency of Hospital Standard Charges; Radiation Oncology Model, 86 Fed. Reg. 63458-01 (published Nov. 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.

# MCLU is online and searchable.

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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	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

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**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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