

# Managed Care Litigation Update®

## NEWSWORTHY

District court certifies class of ERISA beneficiaries “whose request for coverage of residential treatment services for mental illness or substance use disorder was denied by UMR . . . based on UBH’s Level of Care Guidelines or UBH’s Coverage Determination Guidelines.” *Berceanu, et al. v. UMR, Inc.*, *USDC WD WI, No. 3:19-cv-568-wmc, (Doc. 104, filed Dec. 15, 2021)*.

District court remands provider’s state law implied-contract and quantum meruit claims against an ERISA plan on grounds that AA provision of plan destroys complete preemption. *Rush Univ. Med. Center v. Mutual Medical Plans, Inc., et al.*, *USDC ND IL, No. 21-cv-3697, 2021 WL 5882139, (Doc. 23, filed Dec. 13, 2021)*.

Ninth Circuit affirms dismissal of in-network provider’s improper payment claims were barred by the California 4-year statute of limitations, and the iterative processing of the claims did not change the result. *IV Solutions, Inc. v. Empire Healthchoice Assurance, Inc.*, *USAC 9th Cir., No. 20-56132, (Doc. 42-1, filed Nov. 23, 2021)*. Previously reported in *MCLU Vol. 86*.

## FIRM NEWS:

I took the July 2021 California Bar Exam and passed! Watch for news of the firm adding a California office in 2022. *JMH*

## RECENTLY FILED ACTIONS

Member seeks ERISA benefits from self-funded plan associated with residential treatment at Alpine Academy and alleges violations of MHPAEA. The claim was denied as not covered because there is no on site licensed behavioral health provider 24/7.

Member seeks ERISA benefits associated with daughter’s mental health treatment at Newport Academy Redwood and Open Sky Wilderness Program and alleges violations of the MHPAEA and the California Mental Health Parity Act. The denials were pursuant to MCG level of care guidelines.

Removed action in which OON plastic surgeon seeks \$27,821.90 in ERISA benefits and alleges underpayment associated with “repair of complex mouth and lip wound, adjacent tissue transfer, and incision and drainage of left ear hematoma” performed in ER. Billed charges were \$30,625.40 and the amount paid was \$2,803.50.

Member seeks \$23,278.91 in ERISA benefits associated with alleged emergent neonatal intensive care treatment. The claim was denied as OON.

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## RECENTLY FILED ACTIONS

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Member seeks \$31,678.83 in ERISA benefits associated with the removal of an implanted loop recorder and insertion of a dual chamber pacemaker. Billed charges were \$58,154.17 and the amount paid was \$26,475.34.

Member seeks \$99,015 in ERISA benefits associated with daughter's inpatient mental health services at McLean Hospital. The claim was denied based on the availability of less restrictive levels of care pursuant to the Child/Adolescent Medical Necessity Criteria Residential Mental Health Treatment.

Removed action in which OON cancer diagnostic services provider challenges overpayment assessment and alleges underpayment. Provider asserts claims were pre-approved and billed charges had been paid for 10 years, and then [ ] assessed a \$5 million overpayment based on improper billing codes.

OON hospital seeks \$130,466 in benefits and alleges underpayment associated with treatment of minor. Billed charges were \$337,741.50.

Member seeks \$230,000 in ERISA benefits associated with residential inpatient treatment and transitional supervised living at Fulshear Treatment to Transition. The claim was denied "due to Service Components Not Consistent with Level of Care Guidelines for mental health residential setting."

ERISA plan seeks subrogation rights pertaining to tort settlement following minor's injuries suffered at a public pool. The plan's medical payments were \$94,910.90.

Removed action in which OON group seeks \$90,000 in ERISA benefits and alleges underpayment. Billed charges were \$90,000 and no payment was made by the plan. Another action by this provider reported in *MCLU Vol. 188*.

## ADDITIONAL NEWSWORTHY (REGULATORY)

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Colorado Department of Insurance issues regulations pertaining to the reporting of payments to OON providers. Required reporting includes volume of claims processed and denied, along with narrative of recent network changes. 2021 Co. Reg. 591195, 3 CO ADC 702-4:4-2-74, (filed Dec. 10, 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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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

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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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