

# Managed Care Litigation Update®

## NEWSWORTHY

Ninth Circuit extends derivative standing to bankruptcy assignee of mental health and substance abuse treatment center claims where successor in interest alleges \$8.6 million in pre-authorized but unpaid claims. *Bristol LS Holdings, Inc. v. Cigna Health and Life Ins. Co.*, *USCA 9th Cir.*, No. 20-56122, 2022 WL 129139, (Doc. 54, filed Jan. 14, 2022). Previously reported in *MCLU Vol. 127*.

District court denies motion to dismiss state law claims and determines that breach of contract and promissory estoppel claims were not preempted by ERISA because the allegations were based on preservice communications and that only a cursory review of the plan terms would be necessary to adjudicate the claims. *Gotham City Orthopedics, LLC v. United Healthcare Ins. Co., et al.*, *USDC D NJ*, No. 21-11313-KM-MAH, 2022 WL 111061, (Doc. 34, filed Jan. 12, 2022). Previously reported in *MCLU Vol. 177*.

District court denies motion for reconsideration and affirms its dismissal of prompt pay claims where plaintiff failed to allege date of submission of claim to the proper plan. *Surgicore of Jersey City v. Empire Healthchoice Assurance, Inc.*, *USDC D NJ*, No. 19-cv-3485-EK-RML, 2022 WL 118749, (Doc. 29, filed Jan. 12, 2022). Previously reported in *MCLU Vol. 130*.

## FIRM NEWS:

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

With the recent addition of [Henry Norwood](#), the firm has lawyers admitted in TX, LA, CA, MS, MA, MO, FL, and ME.

## RECENTLY FILED ACTIONS

Removed action in which physician group seeks ERISA benefits associated with emergency surgery to treat non-reducible ventral hernia with extensive adhesions of the bowel and omentum. Plaintiff is member of a shared savings network. Billed charges were \$205,292.60 and the amount paid was \$7,018.99. Other actions by this provider (or similarly named provider) reported at *MCLU Vol. 159, 161, 163, 168, 171, 178, 189, 191*.

Member seeks ERISA benefits associated with residential treatment at Outback Therapeutic Expeditions and New Haven Residential Treatment Center. The New Haven claim was denied as not medically necessary. The basis for the Outback denial is not stated in the complaint.

Removed action in which member seeks benefits for surgery recommended by her neurosurgeon. The request for pre-authorization and subsequent appeals were denied, but the grounds for denial are not stated in the underlying complaint.

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## RECENTLY FILED ACTIONS

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Member seeks ERISA benefits from self-funded plan associated with residential care at Innercept and alleges violations of MHPAEA. The initial denial was based on an exclusion for sub-acute residential services, but on appeal, over 5 weeks of treatment were approved, and the balance was denied as not medically necessary pursuant to the InterQual criteria.

Removed action in which emergency hospital alleges underpayment and seeks balance of billed charges associated with emergency treatment of member. Billed charges were \$90,473.01 and the amount paid was \$466.50, with a member co-payment of \$412.50. Plaintiff asserts the mandatory mediation process was unsuccessful.

OON lab seeks ERISA benefits from a self-funded plan and asserts violations of the CARES Act, FFCRA, and ERISA associated with Covid testing. The billed charge was \$1,028 and the amount paid was \$200. Another claim by this provider reported at *MCLU Vol. 179*.

Removed action in which pro se physician seeks ERISA benefits for 8 members whose claims were allegedly never processed. Plaintiff alleges history of prior litigation, some of which has been reported at *MCLU Vol. 58, 172, and 173*.

Removed action in which OON surgeon and alleged assignee seeks ERISA benefits and alleges underpayment associated with emergency laminectomy. Billed charges were \$138,192 and the amount paid was \$4,068.74.

Removed action in which OON physician seeks ERISA benefits and alleges underpayment associated with Reduction Mammoplasty for which provider asserts he was promised payment would be provided at the in-network benefit level. Billed charges were \$170,268 and the amount paid was \$35,557.11. Other actions by this provider reported at *MCLU Vol. 187, 188*.

Member seeks ERISA benefits associated with panniculectomy and subsequent treatment for complications. The pre-authorization for the panniculectomy was denied. Charges for the panniculectomy were \$16,080 and ER costs for subsequent complications were \$27,929.65.

Member seeks ERISA benefits associated with residential treatment at Elevations RTC and alleges violations of the MHPAEA. The claim was denied as not medically necessary pursuant to the [ ] Behavioral Medical Necessity Criteria for Residential Mental Health Treatment for Children and Adolescents.

Removed action in which OON ambulatory surgery center seeks \$188,602.27 in benefits and alleges underpayment associated with treatment of two different members.

Member seeks ERISA benefits associated with proton beam therapy to treat squamous cell carcinoma. The request for authorization was denied on the grounds it was investigational.

Member seeks ERISA benefits from self-funded plan associated with proposed back surgery. The request for approval was denied as investigational and experimental.

Removed action in which OON surgeon and alleged assignee seeks ERISA benefits and alleges underpayment. Billed charges were \$50,331 and the amount paid was \$2,813.53. Other actions by the same provider, or similarly named provider, reported at *MCLU Vol. 1, 5, 44, 52, 59, 69*.

Removed action in which OON mental health and substance abuse treatment centers seek benefits and allege improper conduct in contesting assignments and misleading plaintiffs about the assignability of benefits. Billed charges were \$1,114,415 and the amount paid by the plans was \$60,194.02. Other actions by this provider reported at *MCLU Vol. 152, 163*.

## ADDITIONAL NEWSWORTHY (REGULATORY)

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CMS proposes changes to network adequacy requirements of MA and Part D plans that would mandate the network adequacy standards be met at the time of application, subject to a 10% credit, along with marketing restrictions to address increased complaints associated with third-party marketing organizations. Medicare Program; Contract Year 2023 Policy and Technical Changes to the Medicare Advantage and Medicare Prescription Drug Benefit Programs, 87 Fed. Reg. 1842-01, 2022 WL 102768 (published Jan. 12, 2022).

[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 approximately 2,700 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	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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