

Managed Care Litigation Update®

NEWSWORTHY

Ninth Circuit affirms summary judgment in favor of ERISA plan against substance abuse treatment facility and concludes that the agreement to pay “100% of the allowable rate” refers not to billed charges but instead to “the rate determined by an internal fee schedule.” *Dedicato Treatment Center, Inc. v.*

Independence Blue Cross Blue Shield of Pennsylvania, Inc., USCA 9th Cir., No. 21-55194, 2021 WL 6118164 (Doc. 28-1, filed Dec. 27, 2022). Previously reported in *MCLU Vol. 127*.

District court finds that the FFCRA and CARES Act create an implied right of action in favor of a laboratory against an ERISA plan for payment of COVID-19 testing in denying in part motion to dismiss, but the court dismissed claims under the Texas Prompt Payment of Claims Act, unjust enrichment and quantum meruit. *Diagnostic Affiliates of Northeast Hou, LLC v. United Healthcare Servs., Inc.*, USDC SD TX, No. 2:21-cv-131, 2022 WL 214101 (Doc. 148, filed Jan. 18, 2022). Previously reported in *MCLU Vol. 179*.

District court grants summary judgment in favor of plaintiffs in putative class action alleging wrongful denial of proton beam radiation therapy under ERISA plans. The court applied a *de novo* standard and determined the use of CPB 270 in labeling certain use of PBRT experimental was not supported by the plan terms. *Sharon Prolow, et al. v. Aetna Life Insurance Company*, USDC SD FL, No. 9:20-cv-80545-KAM, 2022 WL 263165 (Doc. 138, filed Jan. 27, 2022). Previously reported in *MCLU Vol. 149*.

RECENTLY FILED ACTIONS

Removed action in which OON surgeon seeks \$132,628.41 in benefits associated with pre-authorized “complicated series of procedures necessary for bilateral mastectomy.” Total billed charges were \$134,764 and the total amount paid was \$2,135.59.

Please join me on March 30 – 31, 2022 at the ACI Managed Care Disputes and Litigation Conference, where I will be co-presenting “How to Navigate Client Expectations: The Top Do’s, Don’ts and Ethical Considerations for In-House and Outside Counsel.” It promises to be an unparalleled learning experience. <https://www.americanconference.com/managed-care-disputes-litigation/>

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RECENTLY FILED ACTIONS

Member seeks ERISA benefits from self-funded plan associated with residential treatment at Elevations and alleges associated MHPAEA violations. Coverage was provided from February 19, 2020 through March 13, 2020 but denied thereafter as not medically necessary pursuant to the MCG guideline Residential Behavioral Health Level of Care, Child or Adolescent.

Removed action in which OON physicians seek \$910,185.89 in ERISA benefits and allege underpayment of claims. The underlying complaint asserts claims for breach of implied contract and quantum meruit. [DISCLOSURE – I am counsel of record in this case.]

Removed action in which purchaser of OON ER claims seeks \$3,380,832.58 pursuant to a book account claim. Plaintiff asserts the claim is for “services rendered by the Plaintiff to United upon the promise by United to pay the agreed amount.”

Member seeks \$22,323.72 in benefits associated with delivery of baby at what was represented to be an in-network hospital, though the hospital left the network prior to the delivery services.

OON ER provider group seeks benefits and alleges underpayment associated with emergency claims. Billed charges were \$405,373 and the amount paid was \$75,291.46. Other actions filed by this provider are reported in *multiple MCLU Vols.*

Member seeks ERISA benefits associated with occupational therapy services and alleges plan applied deductible and coinsurance requirements in violation of the plan terms.

Member seeks cancer benefit under ERISA plan associated with treatment of CTCL-MF (Mycosis Fungoides), “a rare form of blood cancer also called cutaneous T-cell lymphoma.” Plaintiff asserts the plan denied coverage and mistakenly asserted an exclusion for skin cancer.

Member seeks ERISA benefits associated with residential mental health benefits provided at Open Sky and Cascade Crest Residential Treatment Center and alleges violations of the MHPAEA. Basis of denials are not stated in the complaint.

Removed action in which member seeks ERISA benefits associated with son’s treatment at the Menninger Clinic. Plaintiff asserts after two failed appeals, the plan acknowledged coverage would be provided but has not paid the claims.

Medicare Advantage plan member seeks mandamus to compel payment of skilled nursing care facility benefits and asserts a court has already ruled that the claims were covered.

Removed action in which home health care company seeks \$137,429.90 in Medicaid benefits from MCO and alleges that amount is being wrongfully withheld without explanation.

Member seeks ERISA benefits associated with residential treatment at Chrysalis School Montana and alleges violations of MHPAEA. The claim was denied on the grounds Chrysalis is not properly credentialed per plan terms.

ADDITIONAL NEWSWORTHY (REGULATORY)

Bureau of Consumer Financial Protection issues bulletin indicating that an attempt to collect a debt from beneficiaries in excess of the amounts permitted by the No Surprises Act will violate the FDCPA. Bulletin 2022-01: Medical Debt Collection and Consumer Reporting Requirements in Connection with the No Surprises Act, 87 Fed. Reg. 3025-01, 2022 WL 170573 (issued Jan. 20, 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.

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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