

Managed Care Litigation Update[®]

NEWSWORTHY

District court sets aside HHS rule establishing qualified payment amount as presumptively correct payment amount for purposes of arbitration under the No Surprises Act, concluding that the rule conflicts with the NSA and violated the notice and comment requirements of the APA. *Texas Medical Association, et al. v. United States DHHS, et al.*, USDC ED TX, No. 6:21-cv-425-JDK, 2022 WL 542879, (Doc. 113, filed Feb. 23, 2022).

Fourth Circuit affirms denial of member's ERISA claim for residential treatment as not medically necessary during the initial dates of service but reverses and remands MSJ on the subsequent dates of service because the plan failed to respond to member's request for documents supporting the denial, and therefore the plan could not rely on a defense of failure to exhaust administrative remedies. *Kenneth Wilson v. Unitedhealthcare Ins. Co.*, USAC 4th Cir., No. 20-2044, 2022 WL 552028, (Doc. 48, filed Feb. 24, 2022). Previously reported in *MCLU Vol. 84*.

District court dismisses complaint seeking ERISA benefits for facial surgery of trans-woman where the plan determined the surgery was considered cosmetic and member responded that the cosmetic exclusion improperly discriminated in violation of 42 USC § 18116. *Teeanna J. Polonczyk v. Anthem Bluecross and Blueshield, et al.*, USDC ED KY, No. 20-176-DLB-CJS, (Doc. 44, filed Feb. 23, 2022). Previously reported in *MCLU Vol. 166*.

RECENTLY FILED ACTIONS

OON substance use disorder and behavioral health providers seek approximately \$86,000 in ERISA benefits and allege self-funded PPO plans "disregarded their assignments and/or significantly underpaid claims." Other actions by these providers reported at *MCLU Vols. 152, 163, 192*.

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 and alleges violations of the MHPAEA and California MHPA associated with residential treatment at Sunrise Residential Treatment Center. The Sunrise claim was denied pursuant to the MCG level of care guidelines, which plaintiff asserts “fall below reasonable standards of care in the medical community.”

Member seeks ERISA benefits pursuant to the Mental Health Services coverage, asserting that the denial of coverage for residential treatment at Daniels Academy was improper and a violation of the MHPAEA. Member asserts the level of care guidelines used to support the denial were inappropriate.

Removed action in which member seeks ERISA benefits under plan of live-in-girlfriend. Plaintiff asserts he has not received a claim decision in 6 months.

Member seeks ERISA benefits and alleges violations of the MHPAEA associated with inpatient treatment at Optimum Performance Institute Innerchange. The OPI claim was denied based on the MCG level of care guidelines.

Removed action in which alleged assignee of facility’s surgery claim seeks \$306,149.88 associated with processed claim in which \$0.00 was paid. Other cases filed by this provider are reported at *MCLU Vol. 57, 61, 65, 67, 83, 85, 99, 106, 107, 126, 156, 186*.

Member seeks ERISA benefits and alleges violations of the MHPAEA associated with residential treatment at Intermountain Children’s Home. Plaintiff alleges the MCG level of care guidelines on which the denial was based fall below reasonable standards in the medical community.

Member seeks ERISA benefits associated with residential treatment at Maple Lake Academy. The claim was denied for lack of preauthorization, and member contends a PA was inappropriate when the care was ongoing before the effective date of the plan.

OON air ambulance and alleged assignee seeks ERISA benefits associated with alleged emergency transport from Grand Turk to Ft. Lauderdale, Florida. The complaint does not identify the amount billed or amount paid.

Member seeks ERISA benefits associated with residential treatment at Mountain Valley Treatment Center and Waypoint Academy and alleges violations of the MHPAEA. The Mountain Valley claim was denied on the grounds the treatment was outside the scope of provider’s credentials, and the Waypoint claim was denied on the grounds that it did not meet the plan’s definition of “Residential Treatment Center.”

Member seeks over \$190,000 in ERISA benefits from self-funded plan associated with residential treatment at Innercept and alleges violations of MHPAEA. Coverage was provided from April 22, 2020 through May 13, 2020 but denied thereafter as not medically necessary pursuant to the CASII Level 5 guideline.

OON facility and alleged assignees allege underpayment of “no less than \$1,000,000” and asserts plan “did not pay Plaintiff in accordance with Plaintiff’s Multiplan Agreement.”

Removed action in which member seeks Medicare Advantage benefits and alleges price gouging because Plaintiff found prescription Mesalamine at an OON pharmacy for less than the co-pay required at a network pharmacy.

Member seeks ERISA benefits associated with residential treatment at Cumberland Heights Residential Treatment Center. The basis of the denial is not stated in the Complaint.

Removed action in which OON surgical facility seeks \$235,000 in ERISA benefits associated with alleged underpayment. Billed charges were \$227,541 and the amount paid was \$1,593.08. Other actions by this provider reported at *MCLU Vol. 179, 181, 185, 189*.

Member seeks ERISA benefits associated with residential treatment at Evoke at Entrada and alleges violations of MHPAEA. The Evoke claim was denied on the grounds, “This services is not a covered expense.”

OON ER group seeks ERISA benefits and alleges underpayment. Billed charges were \$258,200 and the amount paid was \$38,967.90. Other actions filed by this provider are reported in *multiple MCLU Vols*.

OON hospital and alleged assignee seeks ERISA benefits associated with left heart catheterization and alleges underpayment. Billed charges were \$38,374.15 and the amount paid was \$8,954.02.

Removed action in which physician group seeks over \$350,000 in ERISA benefits associated with alleged underpayment. Other claims by this provider reported in *MCLU Vols. 149, 150, 191*.

OON plastic surgeon seeks ERISA benefits pursuant to an in-network exception for removal and reconstruction of breast implant. Billed charges were \$123,950 and the amount paid was \$5,255.96 with an additional \$5,500 of patient responsibility. Other claims by this provider reported at *MCLU Vols. 95, 130, 139, 147, 151, 162, 166, 180, 187*.

Removed complaint filed pro se in which member challenges alleged \$15,000 co-pay and seeks benefits for Myrbetriq prescription drug.

Member seeks ERISA benefits from self-funded plan associated with correction of congenital breast deformity. The claim was denied as cosmetic pursuant to CPB 0031, and member challenges the denial as inappropriate and the CPB as inappropriate.

Removed action in which OON ER physician and alleged assignee seeks ERISA benefits associated with treatment of member’s right fifth digit. Billed charges were \$21,125 and the amount paid was \$780.48.

Member seeks ERISA benefits from self-funded plan and alleges violations of MHPAEA and California mental health parity act associated with residential treatment at Catalyst Residential Treatment Center. Member asserts

that the MCG guidelines relied upon in denying the claim fall below the reasonable standards of care in the medical community.

ADDITIONAL NEWSWORTHY (REGULATORY)

New Mexico Office of Superintendent of Insurance issues rule establishing licensing and operating standards of Pharmacy Benefit Managers. The regulation further creates an appeal process pertaining to maximum allowable cost disputes and requires a PBM to establish a searchable online database permitting a network pharmacy to search maximum allowable cost list prices for a particular drug. Pharmacy Benefit Managers, 33 N.M. Reg. 394, (published Feb. 22, 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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