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Managed Care Litigation Update®

NEWSWORTHY

District court concludes FFCRA and CARES acts do not create a private right of action in case brought by laboratories claiming underpayment and wrongful denials associated with COVID-19 testing. *Murphy Medical Associates, LLC, et al. v. Cigna Health and Life Ins. Co., et al.*, USDC D. CT, No. 3:20-cv-1675-JBA, 2022 WL 743088, (Doc. 48, filed Mar. 11, 2022).

District court denies summary judgment of PBM where employee plan alleges PBM breached the administrator contract by failing to meet the fraud detection and response requirements of the parties' contract, resulting in significant increases in compound drug prescription costs. *New York City Transit Authority v. Express Scripts, Inc.*, USDC SD NY, No. 1:19-cv-5196-JMF, 2022 WL 603937, (Doc. 144, filed Mar. 1, 2022).

District court determined the administrative record was incomplete and demonstrated procedural irregularities and accordingly remanded ERISA claim for breast reconstruction to plan administrator for reprocessing. *Edith Evans v. United Healthcare of Oklahoma, Inc.*, USDC ND OK, No. 4:20-cv-670-CVE-SH, (Doc. 72, filed Feb. 2, 2022). Previously reported in *MCLU Vol. 167*.

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RECENTLY FILED ACTIONS

Plan asserts overpayment and seeks recoupment associated with COVID-19 lab tests where plan asserts "GS Labs systematically subjects insured patients seeking COVID screening to expensive and wasteful testing (including testing for non-COVID diagnoses)." Similar claims against this provider reported in *MCLU Vol. 181, 186*.

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

Removed action in which member seeks ERISA benefits associated with OON emergency services and asserts plan should pay more than just the maximum allowable fees.

Surgeon and alleged assignee seeks ERISA benefits associated with minimally invasive laminectomy, left transpedicular decompression, and fusion from L3 to S1. Both the facility fee and the professional services fee were denied on the grounds plaintiff was not current with premiums due to retroactive increase in cost that erased a credit balance.

Removed action in which inpatient and outpatient OON substance use disorder providers seek benefits and allege underpayment associated with treatment of 175 members. Plaintiffs allege the plans paid on average "34.89% of their covered charges."

Member seeks ERISA benefits associated with pre-approved surgery where basis of denial is that the maximum benefits had already been met.

Removed action in which OON group seeks ERISA benefits and alleges underpayment. Billed charges were $364,607 and the amount paid was $115,410.76. Other actions filed by this provider are reported in ***multiple MCLU Vols***.

Removed action in which OON plastic surgeon seeks benefits and alleges underpayment associated with double mastectomy and associated procedures. Total charges for 3 surgeries were $158,188.50 and the total amount paid by plan was $3,129.79. Other actions filed by this provider are reported in ***multiple MCLU Vols***.

Putative class action in which member challenges Clinical Policy Bulletin classifying lumbar artificial disc replacement surgery (L-ADR) as experimental and investigational. Plaintiff seeks to certify a class encompassing ERISA plans in which denials are subject to de novo review.

Removed action in which facility seeks benefits and alleges underpayment pertaining to four claims. Billed charges were $832,967.97 and the amount paid was $498,846.03. Plaintiff alleges implied contract and quantum meruit.

OON plastic surgeon seeks ERISA benefits and alleges underpayment of $34,783.20 on total billed charges of $47,335 pertaining to treatment of 4 patients. Other claims by this provider reported at ***MCLU Vols. 95, 130, 139, 147, 151, 162, 166, 180, 187, 195***.

Removed action in which member seeks Medicare Advantage benefits for dental claim on which prior authorization was denied, and member asserts the agent assured her dental coverage was provided.

Member seeks ERISA benefits from self-funded plan associated with proton beam radiation therapy for treatment of adenoid cystic carcinoma. Claim was denied as experimental. Plaintiff alleges Medicare covers PBRT to treat adenoid cystic carcinoma.

Removed action in which pro se member seeks ERISA benefits associated with treatment of newborn "during the initial 31-day period" where claim was denied because "the child was not enrolled in the Plan." DISCLOSURE: I am counsel of record in this case.

Removed action in which provider seeks $135,785 in benefits for an allegedly pre-authorized claim for which no payment was received. The claim was subsequently denied as not medically necessary.

Removed action in which neurosurgeon and assistant seek benefits where separate co-surgeon and facility were paid on claim for L4-5 discectomy with disc replacement with a Pro-Disc-L. The unpaid billed charges are $215,857. The claim was denied as not medically necessary.

Member seeks ERISA benefits from self-funded plan associated with residential treatment at Outback Therapeutic Journeys, LLC and alleges violations of MHPAEA. The claim was denied pursuant to a wilderness therapy exclusion.

OON ambulatory surgical center seeks $104,619.94 in ERISA benefits and alleges underpayment associated with treatment of 3 members. Total billed charges were $151,787. Other actions by this provider reported in *MCLU Vol. 150, 152, 158, 169*.

Member seeks benefits with allegedly pre-approved Gamma Knife Radiosurgery. The claim was denied on the grounds that when member's policy was converted to COBRA, Medicare became primary.

Removed action in which estate of member of ERISA plan challenges subrogation lien following recovery in wrongful death action.

ADDITIONAL NEWSWORTHY (REGULATORY)

Texas Department of Insurance adopts regulation implementing plan disclosure requirements pertaining to network rates, OON allowed amounts, and prescription drug prices. Regulation includes applicability guidance. 47 Tex. Reg. 1059, (filed Mar. 4, 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 5,000 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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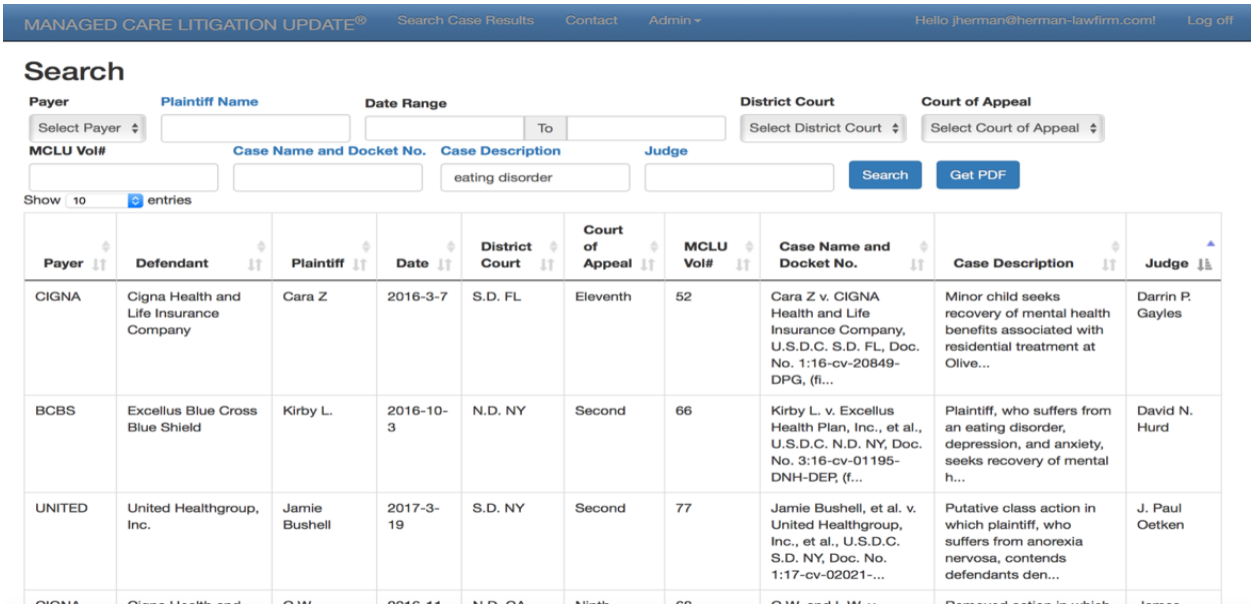

Payer	Defendant	Plaintiff	Date	District Court	Court of Appeal	MCLU Vol#	Case Name and Docket No.	Case Description	Judge
CIGNA	Cigna Health and Life Insurance Company	Cara Z	2016-3-7	S.D. FL	Eleventh	52	Cara Z v. CIGNA Health and Life Insurance Company, U.S.D.C. S.D. FL, Doc. No. 1:16-cv-20849-DPG, (fi...	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

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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