

Managed Care Litigation Update®

NEWSWORTHY

Ninth Circuit reverses district court judgments requiring reprocessing of 67,000 behavioral health claims and rules that “UBH’s interpretation—that the Plans do not require consistency with the [Generally Accepted Standards of Care]—was not unreasonable” and therefore UBH did not abuse its discretion in applying its behavioral health guidelines. *David Wit, et al. v. United Behavioral Health*, USAC 9th Cir., No. 20-17363, (Doc. 92-1, filed Mar. 22, 2022), 2022 WL 850647.

District court grants summary judgment in favor of air ambulance provider requiring payment of \$295,600 where plan sought to negotiate an allowance of \$295,600 “subject to benefit determinations” when payment of only \$16,646.82 was subsequently received. *Aerocare Medical Transport System, Inc. v. Advanced Homecare Management, Inc.*, USDC ND IL, No. 1:20-cv-1735, (Doc. 46, filed Mar. 29, 2022), 2022 WL 910542.

District court grants plan’s motion to dismiss underpayment claims where billed charges were \$79,252.34 and the amount paid was \$1,312.64. The breach of contract and promissory estoppel claims were dismissed for failure to state a claim and the prompt pay and unjust enrichment claims were dismissed as preempted by ERISA. *Anjani Sinha Medical P.C. v. Empire Healthchoice Assurance, Inc.*, USDC ED NY, No. 1:21-cv-138-RPK-TAM, (filed Mar. 31, 2022), 2022 WL 970771. Previously reported in *MCLU Vol. 168*.

RECENTLY FILED ACTIONS

Plan seeks E&O coverage for similar lawsuits by Prime hospitals alleging underpayment of OON emergency care. At issue is whether the \$3 million self-insured retention is owed for each of the separate, similar lawsuits.

Removed action in which OON emergency services provider seeks ERISA benefits and alleges underpayment. Billed charges were \$167,168 and the amount paid was \$8,029.47. Other actions filed by this provider are reported in *multiple MCLU Vols*.

Removed action in which OON neurosurgery specialist seeks ERISA benefits and alleges underpayment associated with surgery to treat C5-6, C6-7 disc herniation and spondylosis with foraminal stenosis. Billed charges were \$304,715 and the amount paid was \$3,319.36.

Removed action in which OON practice asserts eleven New Jersey causes of action and alleges \$1.7 million underpayment of claims associated with ERISA plans where 16% of billed charges were paid.

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RECENTLY FILED ACTIONS

Removed action in which laboratory seeks benefits and asserts underpayment of claim pursuant to the CARES ACT. Plaintiff asserts full posted prices are owed.

Member seeks ERISA benefits associated with residential treatment at Menninger Clinic. Coverage was provided from December 9, 2019 through January 3, 2020 but denied thereafter for lack of medical necessity.

Removed action in which OON plastic surgeon alleges underpayment of claim for post-mastectomy breast reconstruction. Total billed charges were \$27,550 and the amount paid by the plan was \$0. Plaintiff asserts that the parties' prior course of dealing, in which [] once paid full billed charges, and the prior authorization, created the reasonable expectation he would be paid billed charges. Other actions filed by this provider and reported in *MCLU Vol. 96, 107, 108, 111, 159*.

Member seeks over \$40,000 in ERISA benefits associated with residential inpatient treatment at blueFire Wilderness Therapy and alleges violations of MHPAEA. The claim was denied on the grounds of an exclusion for "wilderness camps."

Member seeks over \$240,000 in ERISA benefits from self-funded plan associated with residential inpatient treatment at Waypoint Academy and asserts violations of MHPAEA. The claim was denied on the grounds that residential treatment was not medically necessary.

Removed action in which OON physician seeks ERISA benefits associated with surgical treatment for "recurrent abdominal ventral hernia with large defect." Billed charges were \$97,000 and the amount paid was \$3,895.01.

OON outpatient ambulatory surgery center and alleged assignee seeks ERISA benefits associated with treatment of 16 members. Plaintiff alleges underpayment, but billed charges and the amounts paid are not stated.

Removed action in which out of network substance abuse disorder and mental health providers seek ERISA benefits under PPO plans associated with treatment of 23 members. Other actions by these providers reported at *MCLU Vol. 152, 163, 192, 195*.

Member seeks over \$240,000 in ERISA benefits associated with residential inpatient treatment at Solstice East and alleges violations of MHPAEA. The claim was denied on the grounds 24-hour care was not medically necessary pursuant to health plan guideline Psychiatric Disorder Treatment – Residential Treatment Center (RTC) (CG-BEH-03).

Member seeks over \$33,000 in ERISA benefits from self-funded plan associated with residential inpatient treatment at Wingate Wilderness Therapy and asserts violations of MHPAEA. The claim was denied on the grounds the treatment was investigational and not medically necessary pursuant to the medical policy "Wilderness Programs (Med. 00122)."

Chiropractor seeks ERISA benefits associated with “chiropractic manipulative treatments and therapeutic exercises” where \$9,010 in claims were submitted and denied. The claims were denied on the grounds chiropractic and physical therapy were not covered and that plaintiff’s records did not contain ongoing objective evidence of improvement. Other actions by this provider reported at *MCLU Vol. 174, 178*.

OON plastic surgeon seeks ERISA benefits and alleges underpayment associated with treatment of one-year-old with head laceration. Billed charges were \$8,660 and the amount paid was \$313.26.

Member seeks \$55,948.42 in benefits associated with surgery at the Mayo Clinic. The claim was denied as out of network and not medically necessary.

Member seeks ERISA benefits associated with residential inpatient treatment at Solacium Sunrise and ViewPoint Center and alleges violations of MHPAEA. Both claims were denied as not medically necessary pursuant to the Level of Care Assessment Tool (LOCAT) guidelines for residential treatment.

Removed action in which [] and [] seek recoupment of \$6.6 million associated with claims “for a full range of diagnostic and therapeutic services” where “Defendants do not administer diagnostic tests at each visit.”

OON plastic surgeon seeks benefits associated with bilateral mastectomy and multiple stages of reconstruction and alleges violations of WHCRA. Total charges for three separate surgeries were \$301,069 and the total amount paid was \$11,358.73. Other actions filed by this provider are reported in *MCLU Vol. 159, 161, 163, 168, 171, 178, 189, 191, 192, 197*.

Removed action in which OON provider seeks \$176,544.13 in benefits associated with pre-approved surgery performed on member. Billed charges were \$178,619 and the amount paid was \$2,074.87.

Removed action in which pro se OON ER provider seeks \$2,385.76 in ERISA benefits and alleges underpayment. **DISCLOSURE** – I am counsel of record in this case.

Network hospital seeks over \$6 million pertaining to alleged late payments for which the network discount was voided. Plaintiffs assert breach of contract.

ADDITIONAL NEWSWORTHY (REGULATORY)

CA DMHC adopts new network adequacy standards that involve regular surveying of available appointment times and associated reporting and prompt correction procedures. The new rule will be codified at 28 CA ADC 1300.67.2.2. 12-Z Cal. Regulatory Notice Reg. 365.

[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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| 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



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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