

Managed Care Litigation Update[®]

NEWSWORTHY

Ninth Circuit affirms dismissal of air ambulance claim for \$460,000 involving transport of two patients, both Medicare Advantage members. Dismissal granted for failure to exhaust administrative remedies.

Global Rescue Jets, LLC v. Kaiser Foundation Health Plan, Inc., USAC 9th Cir., No. 20-56410, 2022 WL 1052671 (Doc. 46-1, filed Apr. 8, 2022).

District court grants, in part, motion to dismiss where residential treatment facility sought ERISA benefits. Court dismissed RICO claims for failure to state a claim and dismissed certain state law claims as preempted by ERISA, but it permitted the contract claims to survive. *Meridian Treatment Services, et al. v. United Behavioral Health*, USDC ND CA, No. 4:19-cv-5721-JSW, 2022 WL 1105071, (Doc. 60, filed Apr. 13, 2022). Previously reported in *MCLU Vol. 136*.

Supreme Court of Mississippi rejects arbitration clauses in Medicaid managed care provider agreements as unenforceable and rules that MCO breached its contracts with community mental health centers by imposing a retroactive 5% reduction in payments. *United Healthcare of Mississippi, Inc., et al. v. Mississippi's Community Mental Health Commissions, et al.*, Miss. Sup. Ct., Nos. 2020-CA697-SCT, 2020-IA683-SCT, 2022 WL 871377 (filed Mar. 24, 2022).

RECENTLY FILED ACTIONS

Removed action in which OON dialysis provider seeks \$224,268 in benefits and asserts promissory estoppel and negligent misrepresentation claims associated with 7 months of dialysis treatment.

Removed action in which member seeks ERISA benefits following treatment for automobile accident, including a lumbar spinal fusion surgery. The basis of denial is not stated in the underlying complaint.

Member seeks ERISA benefits associated with right hip resurfacing surgery as a result of being balance billed. Plaintiff asserts the maximum reimbursable charge was \$3,450.68 and that her liability was "at least \$28,500" as a result.

Member seeks ERISA benefits associated MS treatment, particularly Rituxan injections that had been previously covered. Plaintiff asserts a history of adverse reactions with a biosimilar and says that the basis of denial is failure to try other biosimilars.

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RECENTLY FILED ACTIONS

Removed action in which OON ER provider seeks ERISA benefits and alleges underpayment in small claims petition. Another action filed by this provider reported in *MCLU Vol 197*. **DISCLOSURE:** I am counsel of record in this case.

Putative class action in which members and their OON surgeons allege systemic underpayment by self-funded ERISA plans as a result of “Medicare-based” reimbursement instead of Fair Health rates.

Removed action in which physician and alleged assignee seeks ERISA statutory penalties pertaining to request for plan documents concerning administration of claims of 22 patients. Other actions by this provider reported at *MCLU Vol. 58, 172, 173, 192*.

Removed action in which member seeks \$60,667.29 in air ambulance benefits for transport from Pushmataha Hospital in Antlers, OK to OU Medical Center in Oklahoma City. Basis of denial is not stated in underlying petition.

Member seeks ERISA benefits associated with pre-authorized phrenic nerve reconstruction by OON surgeon. Billed charges were \$199,617 but plaintiff asserts the plan “refused to participate in negotiations concerning what is customary and reasonable.”

Removed action in which oncology group seeks “return of payment amount \$31,655.66 plus legal fee \$3,500” associated with ERISA claim for medical benefits from a self-funded plan.

Removed action in which OON hospital seeks ERISA benefits from self-funded plan associated with “complex reconstructive surgery” involving a lumbar laminectomy and spinal fusion. Billed charges were \$376,651 and the amount paid was \$8,048.58. Basis of payment was maximum reimbursable charge.

Removed action in which OON provider seeks ERISA benefits and alleges underpayment associated with alleged emergency services. Total billed charges were \$979,906.20 and the total amount paid was \$8,453.48.

Members seeks ERISA benefits and penalties associated with denied claims and failure to provide plan documents upon request. Members assert that their medical claims began being inappropriately denied once they enrolled in Medicare and the Medicare benefits became primary.

Member seeks ERISA benefits associated with residential inpatient treatment at Change Academy Lake of the Ozarks and SUWS of the Carolinas and alleges violations of MHPAEA. The SUWS claim was paid at the “maximum charge” rather than billed charges. The CALO claim was denied as not medically necessary pursuant to the [] Level of Care Clinical Guidelines.

Removed action where OON pain medicine physician seeks benefits and alleges underpayment of CPT codes 20550, 20553, 76942, 99214, and J3301. Billed charges were \$5,325 and the amount paid was \$1,487.50.

Member seeks ERISA benefits from self-funded plan associated with residential treatment at Elevations. The claim was denied as not medically necessary pursuant to the [] guideline Residential Behavioral Health Level of Care, Child or Adolescent.

Member seeks ERISA benefits associated with residential treatment at Diamond Ranch Academy. Plaintiff asserts the level of care guidelines relied upon did not reflect reasonable standards in the medical community.

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

ADDITIONAL NEWSWORTHY (REGULATORY)

Florida legislature mandates capitation model for all Medicaid managed care plan network agreements at FL. St. 409.968. 2022 Fla. Sess. Law Serv. Ch. 2022-42 (C.S.C. S.S.B. 1950).

[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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