

# Managed Care Litigation Update®

## NEWSWORTHY

Second Circuit affirms summary judgment in favor of ERISA plan where plan provided benefits in amount of generic drugs in lieu of coverage for EffexorXR. Court applied arbitrary and capricious standard. *Jacqueline Fisher v. Aetna Life Ins. Co.*, USAC 2d Cir., Nos. 20-3148, 20-3804, 21-1, (Doc. 92, filed Apr. 22, 2022). Previously reported in *MCLU Vol. 48*.

District Court grants motion to dismiss claims of various substance abuse and mental health treatment centers against self-funded ERISA plans where plaintiffs alleged the plans “improperly paid only a fraction of the billed charges for the particular medical services.” *Dual Diagnosis, et al. v. Horizon Blue Cross Blue Shield of New Jersey, et al.*, U.S.D.C. D. NJ, No. 20-cv-15285-SDW-AME, (Doc. 43, filed Apr. 19, 2022). Previously reported in *MCLU Vol. 163*.

Supreme Court of Iowa affirms grant of summary judgment holding that third-party administrator of state health plan did not unlawfully discriminate on the basis of sex where the TPA denied benefits for gender reassignment surgery. *Vroegh v. Iowa Dep’t. of Corrections*, Sup. Ct. IA, No. 20-484, 2022 WL 981824 (filed Apr. 1, 2022).

## RECENTLY FILED ACTIONS

Member seeks ERISA benefits associated with residential treatment at Trails Carolina, LLC and Daniels Academy and alleges violations of MHPAEA. The Trails claim was denied on the grounds wilderness and outdoor therapy is excluded. The Daniels Academy claim was denied as experimental.

Removed action in which member seeks FEHBA benefits and alleges wrongful termination of coverage where she attempted to switch her coverage from her personal FEHBA plan to her new husband’s FEHBA plan.

Removed action in which OON long term care facility seeks \$3,221,931.25 in denied claims and an additional \$193,204.05 in prompt pay penalties associated with LTAC services to 12 patients. Plaintiff further alleges an improper recoupment. Other actions by this provider reported at *MCLU Vols. 94, 181*.

Removed putative class action in which member seeks Medicaid benefits associated with treatment for pancreatitis. In particular, member sought approval for “TP-IAT” in Virginia because the procedure was not available in New Mexico.

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## RECENTLY FILED ACTIONS

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Member seeks ERISA benefits associated with residential treatment at New Haven Residential Treatment Center and alleges violations of MHPAEA. The claim was denied as not medically necessary pursuant to MCG care guidelines Residential Acute Behavioral Health Level of Care.

Member seeks ERISA benefits associated with residential treatment at Change Academy Lake of the Ozarks and alleges violations of MHPAEA. The claim was denied as not medically necessary pursuant to the Level of Care Assessment Tool guidelines for residential treatment.

Removed action in which OON emergency services provider seeks ERISA benefits and alleges underpayment. Billed charges were \$193,348 and the amount paid was \$46,164.46. Other actions filed by this provider are reported in *multiple MCLU Vols.*

Health plan seeks to confirm arbitration award in which “the Arbitrator determined that [ ] was overcharged for prescription drugs” and that “[ ] breached the Contracts by submitting U&C prices that excluded its RSP discount program prices.”

Removed action in which OON orthopedic surgeon and alleged assignee seeks \$255,690.40 in alleged underpayments associated with preapproved back surgery. Billed charges were \$261,078 and the amount paid was \$5,387.60. Other claims by this provider reported at *MCLU Vols. 95, 130, 139, 147, 151, 162, 166, 180, 187, 195, 197.*

Removed action in which OON orthopedic surgeon seeks \$301,344 in benefits associated with back surgery. Total charges were \$301,344 and payment on the claim was denied.

Member seeks ERISA benefits associated with residential inpatient treatment at New Vision Wilderness and ViewPoint Center and alleges violations of the MHPAEA and the California Mental Health Parity Act. Plaintiff alleges the MCG level of care guidelines relied upon do not reflect reasonable standards in the medical community.

Putative class action on behalf of “medically fragile children under the age of 21” in which members seek Medicaid managed care benefits associated with private-duty nursing care. Plaintiffs allege that three MCOs refuse to provide the medically necessary services in the hours allotted.

Removed action in which member seeks \$14,000 in ERISA benefits from self-funded plan and alleges wrongful denial of claim for “Intracorp Procedure” to treat back pain.

Member seeks ERISA benefits from self-funded plan associated with residential treatment at BlueFire Wilderness Therapy and allege violations of MHPAEA. The claim was denied on the grounds “Service is not covered for either the primary diagnosis or service code listed.”

Removed action in which 21 [ ] Hospitals across six states seek benefits associated with OON emergency services and allege underpayment and wrongful denials.

Removed action in which OON surgeon seeks \$97,435.60 in benefits and alleges underpayment associated with back surgery. Billed charges were \$100,072 and the amount paid was \$2,636.40.

OON ambulatory surgery center seeks ERISA benefits associated with pre-approved "outpatient facility coverage." Billed charges were \$117,652 and the amount paid was \$12,478.66. CPT codes 49560, 49568, 15734x2, 11981, and 13101 were denied as above the eligible expense amount.

Putative class action by member alleging [ ] residential treatment medical necessity criteria is inconsistent with plan documents and MHPAEA.

Member seeks over \$390,000 in ERISA benefits associated with residential treatment at Solacium Sunrise and alleges violations of MHPAEA. The claim was denied on the grounds Sunrise does not have nursing staff onsite 24/7.

Member seeks ERISA benefits associated with residential treatment at Change Academy Lake of the Ozarks and alleges violations of MHPAEA. The claim was denied as not medically necessary pursuant to the MCG guideline Residential Behavioral Health Level of Care, Child or Adolescent.

Member seeks over \$280,000 in ERISA benefits associated with residential treatment at Solacium Sunrise. The claim was denied as not medically necessary pursuant to The American Academy of Child and Adolescent Psychiatry (AACAP) Child and Adolescent Service Intensity Instrument (CASII) Version 4.1 for Level 5.

## ADDITIONAL NEWSWORTHY (REGULATORY)

WA Insurance Commissioner issues Technical Assistance Advisory 2022-01 to address implementation of new state statute restricting balance billing of out-of-network health care services. The bill, effective March 31, 2022, aligns portions of Washington's Balance Billing Protection Act to the federal No Surprises Act and addresses coverage for emergency services. A copy of the Advisory can be reviewed at:

<https://www.insurance.wa.gov/sites/default/files/documents/taa-2022-01.pdf>. (issued Apr. 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, (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

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**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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