

Managed Care Litigation Update®

NEWSWORTHY

District court grants motion to dismiss air ambulance claim on the grounds that there were hospitals in the Dominican Republic that could have treated patient and therefore the transport to Ft. Lauderdale was not medically necessary. *Michael Brannigan, et al. v. Anthem Blue Cross and Blue Shield*, USDC MD FL, No. 8:21-cv-2353-KKM-SPF, (Doc. 37, filed May 12, 2022), *adopting report and recommendation at 2022 WL 1506393* (Doc. 33, filed Apr. 26, 2022). Previously reported in *MCLU Vol. 186*.

District court dismisses suit by self-funded union health-benefit plan against TPA alleging breach of fiduciary duties associated with allegedly “failing to process claims correctly, overpaying benefits, neglecting to recoup overpayments properly, and refusing to provide the information needed by the Fund to verify that claims were priced appropriately.” The court concluded “the Fund has failed to allege any fiduciary breach in which Blue Cross may have participated.” *Massachusetts Laborers’ Health and Welfare Fund, et al. v. Blue Cross Blue Shield of Massachusetts*, USDC D. MA, No. 1:21-cv-10523-FDS, (Doc. 21, filed Mar. 30, 2022). NOA filed Apr. 26, 2022. Previously reported in *MCLU Vol. 173*.

District court dismisses putative class action for lack of subject matter jurisdiction where the named plaintiff did not show that the amounts paid for intensive outpatient program services for addiction and mental health illness exceeded the plan’s deductible. *Collyer Smith v. [redacted], United Healthcare Services, Inc.*, USDC SD IN, No. 1:20-cv-2066-JMS-TAB, 2022 WL 1523327, (Doc. 157, filed May 13, 2022). Previously reported at *MCLU Vol. 158*.

RECENTLY FILED ACTIONS

Member seeks ERISA benefits from self-funded plan associated with residential treatment at Open Sky Wilderness Therapy and alleges violations of MHPAEA. The claim was denied as not covered because the services were “not performed by or upon the direction of a Doctor or other Provider.”

OOO physician group seeks ERISA benefits from self-funded plan and alleges underpayment of pre-authorized surgery. Billed charges were \$193,438 and the amount paid was \$16,125.56. Other actions filed by this provider reported in *multiple MCLU Vols.*

Member seeks ERISA benefits associated with residential mental health treatment at The Menninger Clinic. Coverage was provided from May 6, 2021 through May 21, 2021 but denied thereafter through May 29, 2021. The denial was based on the conclusion that partial hospitalization was appropriate pursuant to the [redacted] Guidelines Inpatient Behavioral Health Level of Care 24th edition.

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RECENTLY FILED ACTIONS

OON provider (and alleged assignee) seeks ERISA benefits associated with emergency surgery to treat “numbness, weakness, and radiculopathy of the upper right extremity.” Billed charges were \$304,715 but the claim was denied entirely. Plaintiff alleges the claim was mistakenly processed as an elective procedure rather than an emergency one.

OON hospital seeks \$3 million in marketplace benefits associated with approximately 100 claims for emergency and post-stabilization treatment not addressed in a 2017 lawsuit. Plaintiff argues, among other things, that [] did not pay anything on certain post-stabilization claims where [] found the treatment could have been provided in network.

Member seeks ERISA benefits from a self-funded plan associated with inpatient treatment New Haven and alleges violations of MHPAEA. The claim was denied as not medically necessary.

Removed action in which member seeks \$24,143.83 in benefits from government plan associated with emergency treatment following car accident. Basis of denial or refusal to pay is not identified in underlying complaint.

Member seeks benefits from World Bank plan associated with residential treatment at Change Academy Lake of the Ozarks. The claim was denied as not medically necessary pursuant to LOCAT criteria.

Removed action in which network hospital seeks \$495,301.23 in alleged underpayments associated with treatment of 20 patients. Plaintiff asserts claims for breach of contract and quantum meruit. Other action by this provider reported at *MCLU Vol. 180*.

Removed action in which out of network emergency hospital seeks benefits associated with emergency treatment. Billed charges were \$51,419 and the amount paid was \$197.44. The parties participated in “the mandatory mediation process established by the Texas Insurance Code” prior to suit.

OON plastic surgeon and alleged assignee seeks benefits and alleges underpayment for pre-approved surgery with an in-network exception. Billed charges were \$64,245 and the amount paid was \$5,541.91 with an additional \$2,375.09 applied to coinsurance. Other actions filed by this provider reported in *MCLU Vol. 82, 95, 147, 178, 179, 180*.

Member seeks ERISA benefits from self-insured plan associated with residential treatment at Vista Sage and alleges violations of the MHPAEA. The “out-of-network Residential Treatment Center criteria” were not met because the patient was not treated by a psychiatrist at least once per week and because a behavioral health provider was not actively on duty 24/7.

Removed action in which pro se physician seeks OON anesthesia fees and alleges underpayment. Billed charges were \$6,160 and the amount paid was \$713.61.

Member seeks over \$120,000 in ERISA benefits from self-funded plan associated with residential treatment at Trails Carolina and Maple Lake Academy and asserts violations of MHPAEA. The Trails claim was denied on the grounds that wilderness therapy is excluded, and the Maple Lake claim was denied as not medically necessary in part because the timing and frequency of psychiatric evaluations.

Removed action in which member seeks \$12,182 in ERISA benefits and alleges underpayment pertaining to maxillofacial surgery. Billed charges were \$13,770 and the amount paid was \$607.31, with a deductible of \$566.23.

ADDITIONAL NEWSWORTHY (REGULATORY)

HHS issues final rule concerning changes to risk adjustment data and validation requirements applicable to ACA risk adjustment program. Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2023, 87 Fed. Reg. 27208 (issued May 6, 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.

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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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