

# Managed Care Litigation Update®

## NEWSWORTHY

Supreme Court determines state may recover future medical expenses through its Medicaid subrogation rights, permitting recovery of settlement payments allocated for future medical care. *Gallardo v. Martiller*, USSC, No. 20-1263, 596 U.S. \_\_\_, (Decided Jun. 6, 2022).

Ninth Circuit affirms summary judgment in favor of plan denying air ambulance claim for transport from Lima to Miami, where plan advised prior to transport that it would not be covered because it was not medically necessary. *Continental Medical Transport, LLC v. Health Care Service Corp.*, USAC 9<sup>th</sup> Cir., No. 21-35481, 2022 WL 2045385 (Doc. 57, filed Jun. 7, 2022). Previously reported at *MCLU Vol. 145*.

District court dismisses behavioral health claims against third-party administrator of government plan where the SPD designated United Healthcare as the administrator and indicated the Plan was self-funded and solely responsible for paying benefits. *Megan Daniels, et al. v. United Healthcare Services, Inc., et al.*, USDC WD WI, No. 19-cv-1038-WMC, 2022 WL 2116184, (Doc. 40, filed Jun. 13, 2022). Previously reported at *MCLU Vol. 143*.

District court dismisses chiropractor's suit alleging approximately \$3 million underpayment where the Court was "flummoxed as to how Plaintiff can confidently contend that it has been underpaid when it has neither reviewed the Plan or Plans, nor delineated in the FAC any applicable terms of the Plan or Plans." *Gotham City Orthopedics, LLC v. Cigna Health & Life Ins. Co.*, USDC D NJ, No. 21-cv-1703-SDW-LDW, 2022 WL 2116864, (Doc. 35, filed Jun. 13, 2022). Previously reported at *MCLU Vol. 170*.

## RECENTLY FILED ACTIONS

Removed action in which member seeks benefits where hospital is balance billing following treatment for injuries incurred in a horse-riding accident. Billed charges were \$85,458.54 and the balance billed amount is \$48,526.16.

Member seeks over \$140,000 in ERISA benefits from self-funded plan for separate periods of residential treatment at Cascade Academy, LLC. The claims were denied as not medically necessary pursuant to the [ ] Residential Behavioral Health Level of Care, Adult.

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## RECENTLY FILED ACTIONS

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Member seeks over \$250,000 in ERISA benefits associated with residential treatment at UINTA Academy. The claim was denied on the grounds the facility was not properly accredited.

Removed action in which OON plastic surgeon seeks benefits associated with allegedly pre-approved, post-mastectomy breast reconstruction where provider received in-network exception. Billed charges were \$61,375. The claim was denied on the alleged mistaken grounds that no PA was provided. Other actions filed by this provider and reported in *MCLU Vol. 96, 107, 108, 111, 159, 197*.

Removed action in which member seeks \$19,545 in ERISA benefits associated with OON psychotherapy sessions. Basis of denial or partial payment are not stated in the underlying small claims petition.

Pro se member of government plan seeks benefits associated with injuries incurred during service in the Army Nurse Core. Grounds for denial or partial payment are not stated in the complaint.

Putative class action in which OON laboratory challenges reimbursement amounts for Covid testing pursuant to the FRCRA and CARES Act. Other actions by this provider reported at *MCLU Vol. 197, 201, 202*.

Physician and attorney-in-fact seeks ERISA benefits and alleges underpayment associated with pre-authorized spinal surgery. Total billed charges for the surgeon and physician assistant were \$314,868 and the total amount paid was \$17,723.39.

In network provider alleges breach of contract by Medicaid Managed Care Organization for failure to pay claims. Damages of \$160,000 are asserted. Similar claim by this provider reported at *MCLU Vol. 193*.

OON physicians allege underpayment of \$349,567.65 associated with alleged emergency treatment of 3 members. Other actions by this provider reported at *MCLU Vol. 162, 191*.

Removed action in which OON surgeon and attorney in fact seeks ERISA benefits associated with back surgery. Billed charges were \$125,980 but the claim was denied as not medically necessary. Other actions by this provider reported at *MCLU Vol. 70, 71, 87, 89, 90, 91, 92, 93, 94, 95, 97, 100, 101, 102, 129, 155, 198*.

OON physician seeks benefits and alleges underpayment associated with reduction mammoplasty for which network exception was provided. Billed charges were \$300,000 and the amount paid was \$3,547.19. Other actions by this provider reported at *MCLU Vol. 187, 188, 192, 194*.

Member seeks ERISA benefits following extensive emergency treatment for motor vehicle accident. Plaintiff challenges alleged underpayment of emergency claims and application of 60-day policy limit of coverage at skilled nursing facility.

Member seeks over \$150,000 in ERISA benefits associated with residential care at Evoke Entrada and Kolob Canyon Residential Treatment Center and alleges violations of MHPAEA. Both claims were denied as not medically necessary.

OON chiropractor seeks \$2,419.09 in ERISA benefits associated with 17 office visits. Plaintiff asserts claims for 7 of the visits were inappropriately denied or underpaid. Other actions by this provider reported at *MCLU Vol. 174, 178, 197*.

Removed action in which member seeks ERISA benefits associated with denial of claim for infertility treatment. Plaintiff asserts denial violates NY state law mandate to cover 3 cycles of IVF. Claim was denied pursuant to an exclusion.

Removed action in which OON plastic surgeon alleges underpayment associated with double mastectomy and associated procedures. Billed charges were \$557,317 and the amount paid was \$16,935.61. 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 physicians allege underpayment of \$227,361.93 associated with alleged emergency treatment of 3 members. Total payment of the three claims amounted to \$4,503.37. Other actions by this provider reported at *MCLU Vol. 162, 191, 202*.

Removed action in which member seeks \$74,000 ERISA benefits associated with neuro stimulation implant and permanent neuro stimulation implant to treat Complex Regional Pain Syndrome. Plaintiff asserts the associated claims were denied on the grounds the plan required 6 months of conservative treatment first.

Putative class action in which OON surgery center challenges the alleged practice of “misrepresenting the nature of payments it would make to out-of-network California medical providers that had agreements with a complementary network called Multiplan.” Other actions by this provider reported at *MCLU Vol. 95*.

Putative class action in which physicians as attorneys in fact allege [ ] underpaid claims where the physicians were contracted with Multiplan but not the plans themselves. Plaintiffs assert the plans inappropriately paid OON rates instead of the network rates.

Removed action in which chiropractor seeks \$613,394.69 in ERISA benefits associated with treatment of 224 members. Plaintiff asserts [ ] was required to either object to the invoice amount or pay the full billed charges “pursuant to New York State Insurance Law.”

ERISA plan seeks \$217,738.47 in subrogation following settlement of workers’ compensation case.

OON lab seeks over \$7 million in ERISA benefits, Medicare Advantage benefits, and Medicaid Managed Care benefits and asserts violations of the CARES Act, FFCRA, and ERISA associated with Covid testing. Other claims by this provider reported at *MCLU Vol. 179 and 192*.

OON plastic surgeon and alleged assignee seeks \$22,207.70 in ERISA benefits associated with “emergency plastic surgery” performed on 2 patients. Other actions by this provider reported in *MCLU Vol. 118, 124, 137, 138, 145, 147, 148, 152, 160, 165, 171, 180*.

Removed action in which OON orthopedic surgeon seeks ERISA benefits and asserts underpayment. Billed charges for the primary surgeon were \$86,641 and the amount paid was \$3,600. Another action filed by this provider reported at *MCLU Vol. 201*.

Removed action in which hospital seeks benefits for claims subject to a Letter of Agreement. Plaintiff asserts an underpayment of \$844,634.06 on billed charges of \$2,536,588.

## 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, (fl...	Minor child seeks recovery of mental health benefits associated with residential treatment at Olive...	Darrin P. Gayles
BCBS	Excelsus Blue Cross Blue Shield	Kirby L.	2016-10-3	N.D. NY	Second	66	Kirby L. v. Excelsus Health Plan, Inc., et al., U.S.D.C. N.D. NY, Doc. No. 3:16-cv-01195-DNH-DER, (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
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, (fl...	Minor child seeks recovery of mental health benefits associated with residential treatment at Olive...	Darrin P. Gayles

## ADDITIONAL NEWSWORTHY (REGULATORY)

Colorado Division of Insurance adopts rule requiring for inclusion as essential health benefits at least one mental health wellness exam per year, acupuncture care, and medically necessary gender affirming care for gender dysphoria. 3 CO ADC 702-4:4-2-42, 2022 CO Reg Text 611126 (published Jun. 10, 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.

## 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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