

# Managed Care Litigation Update®

## NEWSWORTHY

District court concludes that the CARES Act does not provide a private right of action, dismissing claims asserting underpayment of COVID-19 testing. *Saloojas, Inc. v. Aetna Health of California, Inc.*, USDC ND CA, No. 22-cv-1696, 2022 WL 2267986, (Doc. 24, filed Jun. 23, 2022). Previously reported at *MCLU Vol. 197*.

Texas Supreme Court rules premiums on stop-loss policies paid by self-insured employer plan are properly taxed under Insurance Code Chapters 222 and 257, overturning lower court decisions. *Hegar v. Health Care Serv. Corp.*, Tex. Sup. Ct., No. 21-0080, 2022 WL 2183134 (filed Jun. 17, 2022).

District court dismisses remaining ERISA claim asserting underpayment by mental health and substance use disorder treatment facility against various consolidated insurer defendants, finding that plaintiff failed to prove that each individual assigned their benefits to plaintiff. *ABC Serv. Group, Inc. v. Health Net of California, Inc., et al.*, USDC CD CA, No. 8:19-cv-243-DOC, 2022 WL 2348062 (Doc. 627, filed Jun. 13, 2022) (NOA filed Jun. 23, 2022). Previously reported at *MCLU Vol. 125, 126, 127, 128*.

## RECENTLY FILED ACTIONS

Member seeks over \$70,000 in ERISA benefits associated with residential treatment at Shelterwood Residential Treatment Center. The claim was denied on the grounds the center did not have 24-hour nursing care.

Member seeks benefits and alleges unlawful discrimination in violation of Section 1557 as a result of a denial of facial feminization surgery to treat gender dysphoria.

OON physician seeks ERISA benefits and asserts underpayment associated with unspecified surgical treatment. Billed charges were \$12,232 and the amount paid was \$2,109.53. Plaintiff alleges payment was equivalent to 125% of Medicare.

OON physician seeks ERISA benefits and asserts underpayment associated with emergency hemiarthroplasty. Billed charges were \$11,757 and the amount paid was \$3,275.77, with an additional \$818.93 applied to coinsurance.

Removed action in which member seeks \$25,385.51 in benefits from self-funded ERISA plan associated with Stereotactic Body Radiation Therapy. The basis for denial is not stated in the underlying complaint.

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## RECENTLY FILED ACTIONS

OON orthopedic surgeon seeks ERISA benefits and alleges underpayment associated with emergency right S1 nerve root block. Billed charges were \$132,934.24 and the amount paid was \$2,556.69. The basis of payment was "charge exceeds fee schedule/maximum allowable or contracted/legislated fee arrangement." Other action by this provider reported at *MCLU Vol. 191*.

Removed action in which OON physician alleges failure to abide by single case agreement in which provider allegedly agreed to pay \$365,125 for spinal surgery. Billed charges were \$482,972.25 and the initial amount paid was \$170,349.50. An additional \$61,900 was later paid.

Member seeks over \$490,000 in ERISA benefits associated with residential treatment at Change Academy Lake of the Ozarks ("CALO") and alleges violations of MHPAEA. Coverage was provided from May 29, 2020 to June 20, 2020 but denied thereafter on the grounds ongoing residential treatment was not medically necessary pursuant to the MCG guideline Residential Behavioral Health Level of Care, Child or Adolescent.

Member seeks ERISA benefits for two children associated with residential treatment at Aspiro Wilderness Adventure Therapy and New Directions. The Aspiro claim was denied for lack of authorization and not medically necessary. The New Directions claim was denied for lack of medical necessity.

OON surgeons seek ERISA benefits and allege underpayment associated with treatment of 14 beneficiaries. Other actions by this provider reported at *MCLU Vol. 97, 100, 102, 113, 128, 129, 165, 166, 167, 188*.

Putative class action in which member of self-funded ERISA plan challenges practice of "cross-plan offsets" and alleges self-funded plans are harmed when "self-funded plan assets are transferred to [ ] to reimburse [ ] for overpayments it retroactively concludes it had made from its fully insured Plans."

Member seeks over \$330,000 in ERISA benefits from self-funded plan associated with residential treatment at Evoke at Entrada and Solacium Sunrise and alleges violations of MHPAEA. The Evoke claims were denied for multiple reasons, including improper coding and lack of medical necessity. The Sunrise claim was denied as OON without an authorization.

Member challenges priority of ERISA lien in light of Michigan No-Fault Act following treatment for auto accident.

Removed action in which OON physician seeks ERISA benefits and alleges underpayment associated with breast reduction for which a GAP exception was provided. Billed charges were \$116,840 and the amount paid was \$39,873.90.

Member seeks over \$225,000 in ERISA benefits associated with residential treatment at Catalyst Residential Treatment Center and alleges violations of MHPAEA. The claim was denied on the grounds Catalyst is not properly accredited.

Member seeks over \$50,000 in ERISA benefits from self-funded plan associated with residential treatment at Aspiro Adventure LLC and alleges violations of MHPAEA. The claim was denied pursuant to a wilderness camp exclusion.

Member seeks over \$200,000 in ERISA benefits from self-funded plan associated with residential care at Uinta Academy and alleges violations of MHPAEA. The claim was denied on the grounds that the program was experimental and not medically necessary pursuant to the Optum level of care guidelines.

Member seeks over \$180,000 in ERISA benefits from self-funded plan associated with residential treatment at Innercept Residential Mental Health Treatment Center. The claim was denied on the grounds Innercept was not properly accredited.

Member seeks over \$70,000 in ERISA benefits associated with residential treatment at Open Sky Wilderness Therapy and Cascade Academy and alleges violations of MHPAEA. The Open Sky claim was denied pursuant to a wilderness therapy exclusion. Approximately 10 weeks of coverage was provided at Cascade, but the claim for further treatment was denied thereafter as not medically necessary.

Removed action in which OON physicians seek benefits and allege underpayment associated with alleged emergency services. Billed charges were \$76,777.76 and the amount paid was \$1,9228.30. Other actions by this provider reported at *MCLU Vol. 89, 93, 102, 105, 106, 149, 164*.

OON ER provider groups seek \$181,399,037 in ERISA benefits and allege underpayment associated with treatment of 18,652 patients. Billed charges were \$328,499,271 and the amount paid was \$101,275,736.

Member seeks ERISA benefits associated with residential treatment at Evoke at Entrada and alleges violations of the California Mental Health Parity Act and MHPAEA. The claim was denied pursuant to a wilderness camp exclusion.

## ADDITIONAL NEWSWORTHY (REGULATORY)

Louisiana legislature prohibits the use of prepayment review by Medicaid Managed Care Organizations unless “implemented directly by the department and in accordance with the provisions of the Medical Assistance Programs Integrity Law” at La. R.S. 46:460.76. Claims Reviews Conducted by Medicaid Managed Care Organizations, 2022 La. Sess. Law Serv. Act. 534 (S.B. 59) (approved Jun. 17, 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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