

# Managed Care Litigation Update®

## NEWSWORTHY

Seventh Circuit holds that hospital has cause of action against state Medicaid agency under §1983 for violations of Medicaid Act for alleged failure to require timely payment by MCOs. *Saint Anthony Hosp. v. Eagleson*, USAC 7<sup>th</sup> Cir., No. 21-2325, 2022 WL 2437844 (Doc. 60, filed Jul. 5, 2022).

Seventh Circuit affirms dismissal of antitrust claims against insurer by outpatient surgery clinic complaining about preferred provider contract between insurer and hospital system. *Marion Healthcare, LLC v. [ ], Health Care Service Corp.*, USAC 7<sup>th</sup> Cir. No. 20-1581, 2022 WL 2763502 (Doc. 65, filed Jul. 15, 2022).

District court dismisses claim of surgery center where Cigna had allegedly withheld payment for \$5.6 million in ERISA benefits following the determination by Cigna that provider was engaging in fee forgiveness, and the plan terms provided Cigna the discretion to deny benefits if it determines provider engaged in fee forgiveness. *Physicians Surgery Center of Chandler v. Cigna Healthcare Inc.*, USDC D. AZ, No. 20-cv-2007-PHX-MTL, 2022 WL 2390948 (Doc. 52, filed Jul. 1, 2022). Previously reported at *MCLU Vol. 163*.

District court dismisses without prejudice claims of substance abuse and mental health treatment provider on the basis of plan defenses, including anti-assignment provisions. *Dual Diagnosis Treatment Center, Inc. v. Health Care Service Corp.*, USDC ND IL, No. 22-cv-846, 2022 WL 2528060, (Doc. 23, filed Jul. 7, 2022). Previously reported in *MCLU Vol. 195*.

## RECENTLY FILED ACTIONS

Plan sponsor sues administrator and alleges flaws in the claims processing system caused administrator to overpay claims and that the flaws were hidden from sponsor and never fixed.

Removed action in which network hospital seeks over \$6 million in benefits for “emergency care and other medical services.” Hospital asserts hundreds of claims were wrongfully denied or underpaid.

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## RECENTLY FILED ACTIONS

Removed action in which member seeks \$40,000 in ERISA benefits for “cervical disc arthroplasty” for treatment of persistent neck pain. Plaintiff asserts that the California Department of Insurance determined on external review that the procedure was medically necessary.

Member seeks ERISA benefits associated with car accident. Claims were denied pursuant to the “Intoxication or Drug Use” exclusion, and plaintiff asserts the support for the intoxication claim has not been provided or verified.

Removed action in which emergency hospital facility seeks \$113,935.39 in benefits associated with treatment following participation in Texas mandatory mediation process. Billed charges were \$116,128 and the amount paid was \$1,814.02, with an additional \$378.59 allocated to patient’s share.

Removed action in which OON physician seeks \$170,910.83 and alleges underpayment associated with bilateral breast reduction. Total billed charges were \$300,000 for the services of ECPS and Norman Rowe, MD, and the total amount paid was \$129,089.17. Other actions by this provider reported at *MCLU Vol. 187, 188, 192, 194, 202*.

Removed action in which OON plastic surgeon seeks \$295,696.88 in benefits and asserts underpayment associated with bilateral breast reduction. Total billed charges were \$300,000 for the services of both physicians, and the total amount paid was \$4,303.12. Other actions by this provider reported at *MCLU Vol. 187, 188, 192, 194, 203*.

Member seeks over \$260,000 in ERISA benefits associated with residential treatment at Aspiro Adventure, LLC and Daniels Academy and alleges violations of MHPAEA. The Aspiro claim was denied pursuant to a wilderness therapy exclusion and the Daniels Academy claim was denied for failure to meet the licensing, accreditation, and operational requirements of the plan. Plaintiff alleges these requirements violate MHPAEA.

Removed action in which member seeks \$42,500 in Medicare Advantage benefits associated with air ambulance transport from Cozumel, Mexico to Miami, Florida. Following decision by Maximus determining transport was medically necessary, plan paid the allowed amount. Member seeks billed charges.

OON plastic surgeon seeks ERISA benefits and asserts underpayment of alleged emergency services. Billed charges were \$12,567 and the allowed amount was \$1,170.09. Other actions filed by this provider reported at *MCLU Vol. 123, 148, 154, 186*.

Member seeks ERISA benefits from self-funded plan associated with residential treatment at Fulshear Treatment to Transition and alleges violations of MHPAEA. Member alleged the claims were paid inconsistently, ranging from 6% of billed charges to 28% of billed charges.

Putative class action in which member of ERISA plan alleges underpayment of telehealth services. Member asserts that [ ] pays 110% of the Medicare rate for these services but has failed to increase the payment when Medicare increased its payment amount on March 31, 2021.

Removed action in which members allege they were fraudulently sold dental plans that did not cover orthodontic services where members relied on marketing materials believing orthodontic services were covered.

OON provider of therapeutic services for autistic children seeks \$407,609.56 in benefits for alleged outstanding claims not properly processed. Plaintiff alleges all claims were preapproved. Other claims by this provider reported at *MCLU Vol. 183*.

Removed action in which member seeks \$4,200 in ERISA benefits from self-funded plan where services were pre-approved. Claim involved surgery and IONM. Plaintiff alleges she should be excused from timely appeal requirement where she allegedly had no knowledge of denial until she was balance billed.

Anesthesiologist group asserts [ ] has misused its market power by reducing reimbursements in an alleged attempt to harm plaintiff and drive business to United's physician services.

OON ambulatory surgery center and alleged assignee seeks \$30,422.78 in ERISA benefits associated with spinal surgery. Billed charges were \$104,152.15 and the allowed amount was \$5,939.50. Plaintiff asserts the plan terms mandated payment at 150% of Medicare and that the allowed amount is well below that amount.

Removed action in which OON physician seeks \$8,709.83 in ERISA benefits. Billed charges were \$9,689.36 and the amount paid was \$45.23. Other actions by this provider reported at *MCLU Vol. 144, 201*.

Removed action in which member seeks benefits for pre-approved services and alleges plan attempted to cancel and rescind policy. An exhibit to the underlying complaint alleges plaintiff failed to disclose pre-existing condition of sarcoidosis on medical questionnaire.

OON ER staffing company seeks benefits and alleges underpayment of emergency ERISA claims. Plaintiff alleges prompt pay violations, wrongful denials based on diagnosis codes, and underpayment.

Removed action in which plan administrator seeks \$3,410,136.51 associated with claims processed on behalf of incarcerated individuals where administrative services contract was terminated prior to invoice.

Network pathology group seeks benefits associated with the "professional component of clinical pathology services ('PCCP Services')." Plaintiff asserts [ ] adopted a policy to stop reimbursing PCCP Services for certain network providers in 2021.

Removed action in which alleged assignee of two OON claims seeks ERISA benefits and alleges underpayment of claims. Other cases filed by this provider are reported at *MCLU Vol. 57, 61, 65, 67, 83, 85, 99, 106, 107, 126, 156, 195*. **DISCLOSURE – I am counsel of record in this case.**

Member seeks ERISA benefits associated with Applied Behavioral Analysis ("ABA") treatment. Plaintiff further asserts claims for breach of ERISA obligation to provide the claim file and associated plan documents.

Removed action in which OON physician seeks \$165,851.13 in benefits associated with breast reduction. Billed charges were \$85,134.00 for each of the physicians involved, and payment was \$3,469.52 for the first physician and \$947.35 for the second. Other actions by this provider reported at *MCLU Vol. 187, 188, 192, 194, 202*.

## 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, (fi...	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-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)

The Ohio Department of Medicaid issues new rules implementing revisions to Medicaid Managed Care program, including use of a single pharmacy benefit manager, narrowing of “adverse benefit determination” definition to exclude claims that are not clean claims, and mandate to provide care management services to certain populations. 2022 OH Reg Text 612224, revising Ohio Admin. Code 5160-26-01, et al. (filed Jul. 8, 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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