

Managed Care Litigation Update®

NEWSWORTHY

District court dismisses ERISA plan's counterclaim seeking \$13 million in alleged overpayment associated with genetic testing, holding that damages are not available under Section 1132(a)(3). *Genomind, Inc. v. UnitedHealth Group, Inc., et al.*, USDC ED PA, No. 21-cv-373, 2022 WL 2905173 (Doc. 55, filed Jul. 22, 2022). Previously reported at *MCLU Vol. 169*.

District court grants motion to dismiss claim by weight-loss surgical center for lack of standing because "a patient's assignment that conveys to a health care provider only the right to directly receive payment from the patient's health insurance company for services rendered does not convey the patient's right to ERISA benefits or the right to sue to enforce those benefits." *Southcoast Specialty Surgery Center, Inc. v. Blue Cross of California*, USDC CD CA, No. 21-cv-1944-TJH, 2022 WL 3009129 (Doc. 30, filed Jul. 19, 2022) (NOA filed Jul. 27, 2022). Previously reported at *MCLU Vol. 189*.

District court grants motion to dismiss claim for residential care benefits where ERISA plan's denial was for lack of proper licensure and complaint did not sufficiently plead that the "either Evoke or Live Strong House was a residential treatment center as defined by the plan." *J.W., et al. v. Bluecross Blueshield of Texas*, USDC D UT, No. 1:21-cv-21-HCN, 2022 WL 2905657 (Doc. 35, filed Jul. 22, 2022). Previously reported at *MCLU Vol. 171*.

RECENTLY FILED ACTIONS

Member seeks ERISA benefits associated with unspecified preauthorized treatment. Plaintiff asserts no response to the request for external review has been provided in 2 years.

Physician and alleged assignee seeks ERISA benefits associated with cervical discectomy and fusion procedure. Billed charges were \$105,169 and the amount paid was \$47,985, with an additional \$2,395 designated as patient's responsibility.

Member seeks over \$390,000 in ERISA benefits associated with residential treatment at Fulshear Treatment to Transition and alleges violations of MHPAEA. Coverage was provided from July 22, 2020 through August 5, 2020 but denied thereafter for failure to meet medical necessity criteria for Residential Mental Health Treatment for Adults.

Member seeks ERISA benefits from self-funded plan associated with residential treatment at Elevations and alleges violations of MHPAEA. Coverage was provided from February 5, 2020 through April 29, 2020 but denied thereafter as not medically necessary pursuant to the MCG guidelines Residential Acute Behavioral Health Level of Care Child/Adolescent.

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RECENTLY FILED ACTIONS

OON plastic surgeon seeks ERISA benefits associated with alleged emergency surgical treatment following bicycle accident and open head fracture. Billed charges were \$28,578.78. Provider asserts that it resubmitted the claim, that had not been acted upon, and that the latter claim was denied as untimely.

Plan sponsor of fully-insured plan alleges breach of contract associated with request for retroactive premium increase with threat of termination failing agreement.

Removed putative class action in which medical marijuana retailer “seeks a determination that medical cannabis is a healthcare service for treatment of behavioral health conditions” and seeks coverage across Medicaid and commercial plans pursuant to the Lynn and Erin Compassionate Use Act, NMSA 1978 § 26-2B-1 *et seq.*

Member seeks COBRA benefits associated with recommended AV Node Ablation to treat Atrial Fibrillation. After the procedure was initially denied, the member had “severe Atrial Fibrillation and extreme hypertension” and needed “an emergency TEE and Cardioversion.” Member is requesting [] pay his co-pays and deductibles.

Plan sponsor alleges breach of administrative services agreement where sponsor contracted with claims administrator and claims administrator contracted with [] for use of []’s Open Choice Network. Sponsor alleges [] has inappropriately created carve outs to exclude from its network use by the plan sponsor.

Purchaser of OON emergency claims seeks benefits and alleges underpayment, alleging it is entitled to collect full billed charges. Plaintiff asserts claims for quantum meruit and suit on account.

Member seeks \$158,072.76 in ERISA benefits associated with hospital bill following automobile accident where plaintiff alleges the claim was wrongfully denied because it has not been acted upon.

Member seeks ERISA benefits associated with residential treatment at Maple Lake Academy and alleges violations of MHPAEA. The claim was denied for failure to meet the LOCAT guidelines for residential treatment.

ADDITIONAL NEWSWORTHY (REGULATORY)

West Virginia Insurance Commissioner adopts rule modifying scope of its chapter requiring licensing and registration of PBMs and imposing requirement that PBMs offer health plans option of pass-through pricing. The provisions will be codified at WV Admin. Code § 114-99-1, et al. 2022 WV Reg. 616192 (filed Jul. 22, 2022).

Superior Court of New Jersey concludes that OON providers do not have a cause of action to compel the Department of Banking and Insurance to take adverse action against insurer based on alleged violations of Out-of-Network Consumer Protection, Transparency, Cost Containment and Accountability Act. *Garden State Bariatric & Wellness Center, LLC v. Dep't. of Banking and Ins.*, NJSC, No. A-0631-19, A-0823-19, A-1216-19, 2022 WL 2902812 (filed Jul. 22, 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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