

Managed Care Litigation Update®

NEWSWORTHY

District court grants, in part, motion to dismiss for lack of standing due to Anti-Assignment provisions and rejects plaintiff's assertion of standing on the basis of a power of attorney because the power of attorney was not specific enough to satisfy state law requirements. *Gotham City Orthopedics, LLC, et al. v. United Healthcare Ins. Co., et al.*, USDC D NJ, No. 2:21-cv-9056-BRM-ESK, 2022 WL 3500416, (Doc. 47, filed Aug. 18, 2022). Previously reported at *MCLU Vol. 174*.

District court rules CA DMHC rule forbidding exclusions for legal abortion coverage violates the Free Exercise Clause in part because DMHC did not have a policy to review exemption requests from members. *Church v. Watanabe*, USDC ED CA, No. 2:15-cv-2165-KJM-EFB, 2022 WL 3684900 (Doc. 129, filed Aug. 25, 2022).

District court grants summary judgment in favor of ERISA plan where plaintiff sought benefits for residential care, holding that plan did not provide coverage for the type of long-term care received, applying a de novo standard due to delays in processing the claim. *Anne M, et al. v. United Behavioral Health, et al.*, USDC D UT, No. 2:18-cv-808, 2022 WL 3576275, (Doc. 104, filed Aug. 19, 2022). Previously reported at *MCLU Vol. 115*.

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RECENTLY FILED ACTIONS

Removed action in which home health care agency challenges recoupment and seeks temporary restraining order. The overpayment assessment was based on billing by the quarter hour instead of by the hour. Underlying petition does not identify the amounts at issue.

Member seeks ERISA benefits associated with two "successful diagnostic medial branch block procedures." The claims were denied as not medically necessary.

Removed action in which contracted behavioral health providers seek ERISA benefits and challenge denials and nonpayment of claims. Plaintiff asserts breach of contract.

Removed action in which OON plastic surgeon seeks benefits and alleges underpayment with alleged emergency surgery. Billed charges were \$74,914 and nothing was allowed. Other actions filed by this provider are reported in *MCLU Vol. 159, 161, 163, 168, 171, 178, 189, 191, 192, 197, 202*.

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RECENTLY FILED ACTIONS

OON hospital and alleged assignee seeks ERISA benefits and alleges underpayment associated with unspecified services. Billed charges were \$85,575.03 and the amount paid was \$8,592.79. Plaintiff asserts the claim was denied for lack of authorization. Other actions by this provider reported at *MCLU Vols. 48-50, 60, 61, 64, 70, 72, 74, 76, 77, 80, 82, 84-102, 106-108, 111-116, 118, 120, 127, 137, 138, 161, 168, 175, 194*.

OON plastic surgeon and alleged assignee seeks ERISA benefits from self-insured plan associated with an alleged emergency “umbilical/ventral hernia repair and a fasciocutaneous flap procedure.” Billed charges were \$80,200 but the claim was denied for lack of precertification.

Removed action in which OON plastic surgeon seeks benefits and alleges underpayment associated with bilateral breast reduction. Total billed charges were \$170,268 for both providers. The amount paid for the primary surgeon was \$72,363.90 and the amount for the assistant was \$3,097.80. Other actions by this provider reported at *MCLU Vol. 187, 188, 192, 194, 203, 204, 206*.

Removed action in which member seeks benefits associated with a certified nurse midwife. The claim was denied on the grounds the midwives were “not eligible to bill for this type of service” but plaintiff asserts that the policy provides such coverage.

Removed action in which OON surgery center seeks ERISA benefits and alleges underpayment associated with treatment of four members. Billed charges were \$2,000,000 and the total payment was \$200,000. Other actions by this provider reported at *MCLU Vol. 195, 202*.

Member challenges ERISA lien under the Michigan No-Fault Act following auto accident and subsequent treatment.

OON air ambulance providers and alleged assignees seek ERISA benefits and allege untimely processing of claims, appeals, and requests for external review. Other actions filed by this provider reported in *MCLU Vol. 48, 49, 50, 51, 52, 75, 96, and 149*.

Removed action in which member seeks ERISA benefits associated with pre-approved craniectomy where member is being balance billed by OON providers. Billed charges from Keleida Health were \$81,875.88 and \$21,541.51 was paid; an anesthesiologist billed \$4,115 and \$897.67 was paid; and a neuromonitoring charge was \$11,900 and nothing was paid.

OON surgeon practice and alleged assignees seek ERISA benefits associated with 8 claims. Plaintiff does not allege the amount charged or amount paid. Other actions by this provider reported at *MCLU Vol. 97, 100, 102, 113, 128, 129, 165, 166, 167, 188, 203*.

Plastic surgeons and alleged assignees seek ERISA benefits and alleges wrongful denial and underpayment associated with preauthorized post-mastectomy breast reconstruction services. The primary surgeon billed \$130,000 and the claim was denied. The second surgeon billed \$120,000 and the amount paid was \$2,889.18.

Removed action in which California provider who is in network with [] seeks ERISA benefits from [] and alleges underpayment. Billed charges were \$332,204.54 and the amount paid was \$9,481.13. Plaintiff alleges that the underpayment pursuant to its [] contract would be \$96,220.56.

Member seeks ERISA benefits associated with emergency treatment following motorcycle accident. Plaintiff asserts \$85,000 in billed charges were not paid on the grounds the services were not medically necessary.

Member seeks in-network ERISA benefits associated with unspecified treatment and asserts the decision on appeal was not timely made.

Removed action in which member seeks ERISA benefits associated with unspecified OON treatment. Basis of denial is not stated in underlying complaint.

Removed action in which member seeks ERISA benefits associated with lap sleeve gastrectomy. The claim was denied as not medically necessary.

Removed action in which OON plastic surgeon seeks ERISA benefits and asserts underpayment of bilateral breast reduction. Billed charges were \$85,134 and \$85,134 for the providers, and the paid amounts were \$20,923.61 and \$14,622.38, respectively. Other actions by this provider reported at *MCLU Vol. 187, 188, 192, 194, 203, 204, 206*.

OON orthopedic surgeon seeks ERISA benefits and alleges underpayment associated with "emergency open reduction and fixation of the left clavicle." Billed charges were \$114,582.99 and the amount paid was \$4,644.28.

Removed action in which member seeks benefits associated with Proton Beam Radiation to treat state IIC localized high-risk prostate cancer. The claim was denied as not medically necessary.

Member seeks ERISA benefits associated with residential treatment at The Recovery Village. Plaintiff asserts the request for approval was granted but that the claim was subsequently denied as not covered.

Member seeks ERISA benefits associated with residential treatment at Evoke at Entrada and Live Strong House and alleges violations of MHPAEA. The Evoke claim was denied on the grounds wilderness therapy programs are experimental and investigational. The Live Strong claim was denied as not medically necessary pursuant to the [] Behavioral Health Guidelines.

Member who is being balance-billed seeks ERISA benefits and alleges underpayment associated with treatment at Insperity Hospital. Billed charges were \$93,697.74 and the amount paid was \$867.36 with a \$208.43 deductible and \$2,954.48 copayment.

OON hospital alleges \$1,020,186.61 in underpayments along with prompt pay violations. Plaintiff alleges that prior to admission, it obtained pre-approvals along with a written agreement to pay for services based on the Medicare DRG.

Member's estate seeks \$686,723.14 in ERISA benefits associated with at-home skilled nursing care and challenges overpayment assessment of \$357,683.98 assessed on the basis that the services were custodial in nature.

Removed action in which OON provider seeks \$213,629.75 in ERISA benefits and alleges underpayment associated with treatment of 7 members. Plaintiff asserts that during discussions with plan personnel, the plan represented that payment would be based on UCR and not the Medicare fee schedule. Other actions by this provider reported at *MCLU Vols. 179, 181, 189*.

ADDITIONAL NEWSWORTHY (REGULATORY)

HHS, IRS, Dept. of the Treasury, Employee Benefits Security Administration, DOL, and CMS issue final rules implementing the No Surprises Act, requiring the disclosure of additional information pertaining to downcoding and associated with the qualified payment amount (QPA) and also discussing the appropriate payment determinations and consideration of the QPA under the IDR process. Requirements Related to Surprise Billing, 87 Fed. Reg. 52618-01, (published Aug. 26, 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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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



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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