

Managed Care Litigation Update®

NEWSWORTHY

District court dismisses underpayment claim by OON provider where provider failed to exhaust the administrative appeals applicable to the state plan. *Modern Orthopedics of New Jersey v. Horizon Healthcare Services, Inc.*, USDC D NJ, No. 21-cv-20174, 2022 WL 3211417, (Doc. 13, filed Aug. 8, 2022).

Previously reported at *MCLU Vol. 189*.

District court grants summary judgment in favor of UHC, affirming denial of extended residential care after covering two weeks of care, applying the arbitrary and capricious standard. *Ian C., et al. v. United Healthcare Insurance Company*, USDC D UT, No. 2:19-cv-474-HCN, 2022 WL 3279860 (Doc. 64, filed Aug. 11, 2022). Previously reported at *MCLU Vol. 132*.

Summary judgment granted in favor of beneficiary who alleged wrongful denial of claim for residential care, where the Court applied the abuse of discretion standard, and determined that the “barebones” denial letter failed to discuss any parts of the record or evidence that beneficiary submitted or relied upon. *Doe v. Blue Shield of California*, USDC ND CA, No. 21-cv-2138-RS, 2022 WL 3155158 (Doc. 52, filed Aug. 8, 2022). Previously reported at *MCLU Vol. 173*.

Partial summary judgment granted, dismissing certain IONM claims from OON provider for lack of evidence demonstrating breach of PPO plans, holding that plaintiff failed to identify evidence showing that Defendant specifically promised the provider would be paid a reasonable amount for providing the services. *MedARC, LLC, et al. v. Scott and White Health Plan*, USDC ND TX, No. 3:20-cv-3241-BH, 2022 WL 3044569 (Doc. 58, filed Aug. 1, 2022). DISCLOSURE – I am counsel of record for SWHP.

RECENTLY FILED ACTIONS

Removed action in which OON orthopedic surgeon seeks \$139,444.92 in benefits and alleges underpayment on preapproved claim. Billed charges were \$142,072 and the amount paid was \$2,627.08. Other claims by this provider reported at *MCLU Vols. 95, 130, 139, 147, 151, 162, 166, 180, 187, 195, 197, 199*.

Removed action in which in-network mental health services provider seeks \$86,770.95 in ERISA benefits associated with residential treatment. A portion of the claim was denied as not medically necessary and the provider challenges this determination.

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RECENTLY FILED ACTIONS

Removed action in which dental provider seeks \$1,026,157 in benefits associated with treatment of seven members, including those insured by ERISA plans. Provider asserts implied conduct based on course of dealing. Underlying complaint indicates [] had raised concerns regarding alleged overutilization of x-rays.

Member seeks ERISA benefits associated with pre-authorized "major orthognathic double jaw surgery" performed by OON surgeon. Billed charges were \$52,575 and the amount allowed was \$3,488.67.

Removed action in which member seeks ERISA benefits associated with preauthorized oral surgery. Plaintiff alleges the claim was denied on the grounds additional information was needed.

OON plastic surgeons and member seek ERISA benefits from self-funded plan associated with post-mastectomy reconstruction services. On the first date of service, billed charges for the different surgeons were \$139,909 and \$124,506, and payment was made for \$5,434.98 and \$2,067.55, respectively. On the second date of service, billed charges were \$21,079 and the amount paid was \$1,555.45. **DISCLOSURE – I am counsel for the Defendants.**

OON neurologists seek benefits associated with treatment of 7 patients and allege underpayment. Plaintiff asserts claims under ERISA and Florida state law regarding payment for emergency services.

Member seeks ERISA benefits associated with two knee surgeries that cost member approximately \$80,000 in balance billing after the claims were reprocessed to denials. The basis for retroactive denial was that the ERISA benefits were secondary to Medicare Part B, which was not elected.

Removed action in which member seeks COBRA benefits associated with "emergency outpatient surgery to remove stones from his kidney." The basis for denial is not stated in the underlying Complaint.

Member seeks ERISA benefits associated with residential treatment at Innercept and alleges violations of MHPAEA. The claim was denied as not medically necessary pursuant to the 2019-2020 Magellan Care Guidelines and "[] will provide benefits based on the most cost-effective service."

Member seeks ERISA benefits from self-funded plan associated with residential treatment at Uinta Academy and alleges violations of MHPAEA. The claim was denied as not medically necessary pursuant to MCG guideline Residential Behavioral Health Level of Care, Child or Adolescent.

Member seeks \$25,888.58 in ERISA benefits from multiple plans associated with cesarean delivery. [] denied the claim on the grounds another plan was primary, and the complaint does not specify why the [] plan did not pay.

Member seeks ERISA benefits associated with residential treatment at Elevations RTC and alleges violations of MHPAEA. The claim was denied as not medically necessary pursuant to the 2020-2021 Magellan Care Guidelines for Residential Behavioral Health Level of Care, Child or Adolescent.

Member seeks ERISA benefits from self-funded plan associated with residential treatment at Triumph Youth Services and alleges violations of MHPAEA. The claim was denied as not medically necessary because the “documentation did not indicate ongoing acute safety concerns.”

Removed action in which provider filed a “Warrant in Debt” seeking \$25,000 from dual plan that administers both Medicaid and Medicare benefits. The underlying Warrant in Debt does not identify the basis of payment or denial.

Member seeks ERISA benefits from self-funded plan associated with residential treatment at Uinta Academy and alleges violations of MHPAEA. The claim was denied as not medically necessary pursuant to the [] care guidelines 23rd Edition.

Removed action in which emergency hospital seeks \$55,858.16 following unsuccessful mediation pursuant to Texas mandatory mediation regime. Paid amount was \$610.10.

OON hospitals seek \$211,512,899 in ERISA benefits and allege underpayment of hospital services associated with 10,650 patient visits spanning March 15, 2016 through May 31, 2021. Patients assert claims under ERISA, breach of contract, breach of duty of good faith and fair dealing, quantum meruit, prompt payment, and promissory estoppel. Other actions by this provider reported at *MCLU Vol. 65, 203*.

Member seeks ERISA benefits associated with residential treatment at Innercept and alleges violations of MHPAEA. Coverage was provided from November 14, 2019 through December 3, 2019 but denied thereafter pursuant to the UBH Level of Care Guideline for the Mental Health Residential Treatment Center Level of Care.

Removed action in which OON physician seeks ERISA benefits and alleges underpayment for “surgical and medical services” provided to various members. Billed charges were \$63,850 and the amount paid was \$2,126.38. Plaintiff further alleges prompt pay violations and other state law claims.

Member’s estate seeks ERISA and COBRA benefits and alleges associated FMLA violations for nursing home care. Plaintiff asserts it was told that there was a misunderstanding when the employer tried to change from a fully-insured plan to a self-insured plan, leaving employees uninsured for a month.

OON physicians allege underpayment of \$181,431.50 associated with both emergency and non-emergency treatment of 6 members. Charges and payment for the 6 patients were (1) \$80,000 billed, claim denied as experimental, (2) \$45,000 billed, \$7,619.95 paid, (3) \$30,000 billed, \$6,000 paid, (4) \$50,000 billed, claim denied, (5) \$195,000 combined for surgeon and assistant, \$4,908.84 paid, and (6) \$170,000 combined for surgeon and assistant, \$10,000 total paid. Other actions by this provider reported at *MCLU Vol. 162, 191, 202, 206*.

Removed action in which OON physician and alleged assignee seeks \$199,957.62 in ERISA benefits associated with alleged emergency treatment of 7 members. Total billed charges were \$203,585.36 and the total amount paid was \$3,627.74.

Removed action in which OON plastic surgeon seeks \$296,315.60 in benefits associated with bilateral breast reduction. Plaintiff asserts a network exception was granted. Billed charges were \$150,000 for each co-surgeon and the amounts paid were \$1,009.85 and \$2,674.55, respectively. Other actions by this provider reported at *MCLU Vol. 187, 188, 192, 194, 203, 204*.

Member seeks ERISA benefits associated with residential treatment at Elements Wilderness Program and Crossroads Academy and alleges violations of California parity act and MHPAEA. The Elements denial was based on a wilderness camps exclusion, and the Crossroads claim was denied as not medically necessary.

Member seeks ERISA benefits associated with residential treatment at Elevations Residential Treatment Center and alleges violations of California parity act and MHPAEA. The Complaint does not identify the basis for denial.

Removed action in which OON plastic surgeon seeks benefits and alleges underpayment associated with emergency services. The Complaint does not identify the billed charges but asserts the 90th percentile charge as reported by Fair Health is \$118,771, and the amount paid was \$5,367.03. Other actions by this provider reported at *MCLU Vol. 169, 170, 173, 183, 201, 206*.

Removed action in which OON plastic surgeon seeks benefits and alleges underpayment associated with bilateral breast reduction. The combined charges were \$150,000 for each provider, and the amount paid for each provider was \$45,615.93 and \$45,228.35, respectively. Other actions by this provider reported at *MCLU Vol. 187, 188, 192, 194, 203, 204*.

ADDITIONAL NEWSWORTHY (REGULATORY)

HHS proposes new Section 1557 rule on nondiscrimination in health programs including “robust protections for LEP individuals,” including written language access procedures pertaining to the identification of LEP individuals, names of bilingual or multilingual staff, and location of translated materials. Nondiscrimination in Health Programs and Activities, 87 Fed. Reg. 47824-01, (published Aug. 4, 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	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

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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