

Managed Care Litigation Update®

NEWSWORTHY

District court grants 12(b)(1) motion to dismiss on basis of the enforceability of ERISA plans' anti-assignment clauses.

Superior Biologics NY, Inc. v. Aetna, Inc., et al., USDC SD NY, No. 20-cv-5291-KMK, 2022 WL 4110784 (Doc. 69, filed Sep. 8, 2022). Previously reported at *MCLU Vol. 156*.

District court grants motion to dismiss Section 1557 claim alleging impermissible discrimination based on member's gender, holding that complaint failed to allege that the health policy was associated with a health program or activity that receives federal assistance and that plaintiff's allegation that the basis of the denial was due to plaintiff's gender was conclusory. *Tinsley Ariana Taylor Makayla Saramosing v. Health Care Service Corp.*, USDC WD OK, No. 21-cv-669, 2022 WL 4086565 (Doc. 17, filed Sep. 6, 2022). Previously reported at *MCLU Vol. 180*.

District court dismisses for lack of personal jurisdiction claims of pharmacy against plans where the plans' PBM terminated the pharmacy from the network, determining that the termination from the PBM network had nothing to do with the defendants' contacts with the forum state. *CZ Services, Inc., et al. v. Anthem Insurance Companies, Inc., et al.*, USDC ND CA, No. 19-cv-4453-JD, 2022 WL 4126281 (Doc. 124, filed Sep. 9, 2022).

State court of appeals, in reversal of trial court, determined Kentucky's 2020 Medicaid Managed Care RFP was valid and rejects bid protest of Anthem, while remanding for dissolution of temporary injunction awarding Anthem an MCO contract. *Molina Healthcare of Kentucky, Inc. v. Anthem Kentucky Managed Care Plan, Inc., et al.*, KY App. Ct., No. 2021-CA-0806, 2022 WL 4112393, (filed Sep. 9, 2022).

RECENTLY FILED ACTIONS

OON plastic surgeon seeks benefits and alleges underpayment associated with alleged emergency surgery. Billed charges were \$97,651 and the amount paid was \$1,704.89. Other actions filed by this provider are reported in *MCLU Vol. 159, 161, 163, 168, 171, 178, 189, 191, 192, 197, 202, 207*.

Removed action in which OON facility and alleged assignee seeks ERISA benefits and alleges underpayment associated with treatment of 5 members. Other actions filed by this provider are reported in *MCLU Vol. 179, 183, 184*.

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RECENTLY FILED ACTIONS

Removed action in which member seeks \$56,855 in ERISA benefits from self-funded plan associated with air ambulance transport following horse riding accident. The underlying complaint alleges the claim was denied on the grounds the closest competent trauma center was 7 miles closer than the one used.

Removed action in which OON plastic surgeon seeks ERISA benefits and alleges underpayment associated with bilateral breast reduction. Billed charges were \$150,000 and the amount paid was \$1,932.10. Other actions filed by this provider (and/or similarly named providers) are reported in *MCLU Vol. 187, 188, 192, 194, 203, 204, 206, and 207*.

Removed action in which alleged assignee of facility claim alleges underpayment associated with unspecified services. Billed charges were \$78,304 and the amount paid was \$460.35. Other cases filed by this provider are reported at *MCLU Vol. 57, 61, 65, 67, 83, 85, 99, 106, 107, 126, 156, 195, 204*.

Member seeks ERISA benefits from self-funded plan associated with injuries to cervical spine following dive into swimming pool. The claims were denied due to exclusion for intoxication, and member challenges the enforceability of that exclusion.

Member seeks supplemental health benefits associated with "elevated PSAs." Basis of denial was not stated in complaint.

OON emergency provider group seeks benefits and alleges underpayment. Billed charges were \$203,775 and the amount paid was \$34,600.66. Other actions filed by this provider are reported in *multiple MCLU Vols*.

OON surgeon group seeks \$185,765.72 in benefits from self-insured state government plans and alleges underpayment associated with emergency treatment. The claims involved 4 visits by one member to treat an abdominal wound. Other actions by this provider reported at *MCLU Vol. 89, 93, 102, 105, 106, 149, 164, 203*.

Removed action in which physician and alleged assignee seeks benefits and asserts underpayment associated with "an L3 laminectomy, an L4 laminectomy, an L5 laminectomy and a partial S1 laminectomy." Billed charges were \$200,900 and the amount allowed was \$623.88.

Removed action from small claims court in which member seeks ERISA benefits from self-funded plan for unspecified services.

Member seeks more than \$180,000 in ERISA benefits associated with residential treatment at Solacium Sunrise and alleges violations of MHPAEA. The claim was denied on the grounds Sunrise did not meet the definition of a residential treatment facility because it lacked 24-hour nursing.

Member challenges subrogation lien following automobile accident injuries and associated lawsuit.

Removed action in which OON spine surgeon alleges underpayment and that she was misled regarding the plan's payment rates. The underlying complaint does not state either the billed charges or the amount paid.

Emergency physician group files RICO claims against [] associated with "systematic and unjustified denial of claims for high acuity patients" following termination of network contract in January of 2021. Causes of action asserted include RICO, fraud, prompt pay violations, and associated claims under Tennessee state law.

[] seeks recovery from emergency physician group associated with "a classic form of healthcare fraud called upcoding." The causes of action include fraud, negligent misrepresentation, fraudulent and unlawful insurance acts under Tennessee law, and civil RICO, among others.

Removed action in which member seeks ERISA benefits associated with inpatient substance abuse treatment at Cirque Lodge. Plaintiff asserts he was told coverage would be provided prior to the admission.

Plastic surgery group appeals arbitration decision under the No Surprises Act associated with "emergency plastic surgery." Plaintiff alleges the arbitrator "appears to have inappropriately applied a presumption to one factor, the Qualifying Payment Amount."

Removed action in which member sues plan and UM Medical Director where prior authorization for "esophagus procedure" was denied. The request for "endoscopic revision Zenker's repair" was denied as experimental and investigational.

Removed action in which OON surgeon seeks benefits and alleges underpayment associated with two emergency surgeries to remove glioblastoma. Billed charges for each of the surgeries were \$70,000 and the amounts paid were \$3,598.98 and \$3,135.11, respectively.

Removed action in which group of 22 independent pharmacies sue PBM alleging discriminatory MAC pricing in favor of mail-order pharmacies and large retail chain pharmacies in violation of its contracts with the independent pharmacies.

Removed action in which group of independent pharmacies sue PBM alleging discriminatory MAC pricing in favor of mail-order pharmacies and large retail chain pharmacies in violation of its contracts with the independent pharmacies.

Removed action in which OON plastic surgeon seeks ERISA benefits and alleges underpayment associated with bilateral breast reduction. Billed charges were \$150,000 for each of the two providers, and the amounts paid were \$42,080.64 and \$3,553.96, respectively. Other actions by this provider reported at *MCLU Vol. 187, 188, 192, 194, 203, 204, 206, 207*.

Removed action in which pro se member seeks ERISA benefits associated with formula recommended by specialty GI doctor for infant's dairy allergy. Plaintiff alleges the claims were denied for various reasons such as "incorrect file, missing information, not covered, etc."

ADDITIONAL NEWSWORTHY (REGULATORY)

Oklahoma Health Care Authority issues regulations implementing the state's Medicaid Managed Care regime following the passage of Senate Bill 131, including requirements pertaining to enrollment, network adequacy, prior authorization requirements, and appeals. Managed Care, 39 Ok Reg. 1628 (issued Sep. 1, 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.

FIRM NEWS – WELCOME JOEL MINTZER!



I'm thrilled to announce that [Joel Mintzer](#) has joined [Herman Law Firm](#) as Of Counsel. Joel was former Deputy General Counsel -- Disputes and Litigation at [Blue Cross and Blue Shield of Minnesota](#) and adds tremendous skills to the firm's deep bench of talent. The firm has lawyers admitted in Illinois, Iowa, Minnesota, Texas, Mississippi, California, Florida, Maine, Massachusetts, and Louisiana.

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



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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