

Managed Care Litigation Update®

NEWSWORTHY

District court issues jury verdict and injunctive relief in favor of deputy who challenged exclusions for “drugs for sex change surgery” and “services and supplies for a sex change and/or the reversal of a sex change” pursuant to Title VII of the Civil Rights Act. *Anna Lange v. Houston County, Georgia*, USDC MD GA, No. 5:19-cv-392-MTT, (Doc. 258, filed Oct. 3, 2022).

Court grants ERISA plan motion to dismiss putative class action, rejecting argument of provider that the CARES Act and FFCRA obviate the need for an assignment of benefits to state a claim under Section 502. *Saloojas, Inc. v. Aetna Health of California, Inc.*, USDC ND CA, No. 3:22-cv-2887-JSC, (Doc. 36, filed Sep. 30, 2022). Previously reported in *MCLU Vol. 201*.

District court grants judgment in favor of United on all counts in class action alleging that the facility fee was improperly denied where the physicians performed office-based surgeries. *The Medical Society of the State of New York v. Unitedhealth Group, Inc.*, USDC SDNY, No. 1:16-cv-5265-JPO, (Doc. 363, filed Sep. 14, 2022). Previously reported in *MCLU Vol. 60*.

Summary judgment granted in favor of ERISA plan affirming plan’s denial of treatment following car accident where the plan applied the crime exclusion, arguing that the police report contained in the record showed that the member suffered issues while fleeing the scene of an accident. *University of North Carolina Health Care System v. ITPEU Health and Welfare Plan, et al.*, USDC SD GA, No. 4:20-cv-246-RSB-CLR, (Doc. 81, filed Sep. 29, 2022). Previously reported in *MCLU Vol. 162*.

RECENTLY FILED ACTIONS

Member seeks ERISA benefits associated with residential treatment at SUWS of the Carolinas Center. The claim was denied pursuant to a wilderness therapy exclusion.

Purchaser of OON facility claims and alleged assignee seeks benefits and asserts underpayment associated with treatment of 3 patients. Billed charges on claim 1 were \$171,702.50 and the amount paid was \$821.32; billed charges on claim 2 were \$273,673 and the amount paid was \$3,817.11; and billed charges on claim 3 were \$41,072.50 and the amount paid was \$437.58.

WELCOME JOEL MINTZER!

We are 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.



RECENTLY FILED ACTIONS

Member seeks ERISA benefits associated with residential treatment at Confluence Behavioral Health and PATH at Stone Summit and alleges violations of MHPAEA. Both the Confluence claim and the PATH claim were denied due to an exclusion not specified in the complaint.

Removed action in which OON surgeon seeks ERISA benefits and asserts underpayment. Plaintiff asserts causes of action for promissory estoppel, negligent misrepresentation, and unjust enrichment.

Removed action in which laboratory seeks ERISA benefits associated with COVID-19 testing and alleges violations of the FFCRA and CARES Act. Plaintiff alleges its cash price for the PCR tests was \$195 and the cash price for antibody tests was \$125.

Removed action in which physician seeks \$174,165.68 in ERISA benefits associated with treatment provided on two dates of service. Basis of payment or denial is not identified in the attached state filings.

Removed action in which OON neurosurgeon seeks ERISA benefits and alleges underpayment and wrongful denials associated with alleged emergency brain surgery. Plaintiff seeks \$133,279.36 attributed to services of the surgical assistant and an invasive brain surgery. Other claims by this provider reported at *MCLU Vol. 184, 188*.

OON vascular neurosurgeon seeks benefits associated with pre-authorized surgical treatment for brain aneurism. Billed charges were \$248,200 and plaintiff's asserted UCR offer was \$184,200. The amount paid was \$4,691.20.

Removed action in which member seeks ERISA benefits associated with emergency care for chest pain. Basis of denial or underpayment is not stated in underlying complaint.

Removed action in which alleged assignee of OON physician seeks ERISA benefits and alleges underpayment associated with surgery. Billed charges were \$79,700 and the amount paid was \$8,857.74. Other cases filed by this entity are reported at *MCLU Vol. 57, 61, 65, 67, 83, 85, 99, 106, 107, 126, 156, 195, 204, 208*.

Member seeks ERISA benefits associated with unspecified treatment and alleges plan would not accept evidence in support of appeal.

Removed action in which OON physician seeks benefits and alleges underpayment associated with bilateral breast reduction. Billed charges were \$150,000 for each of the physicians, and the amounts paid were \$45,615.93 and \$45,228.35, respectively. Other actions by this provider reported at *MCLU Vol. 187, 188, 192, 194, 203, 204, 206, 207, 208*.

Removed action in which OON physician seeks benefits and alleges underpayment associated with bilateral breast reduction. Billed charges were \$85,134 for each of the two physicians, and the amounts paid were \$1,394.01 and \$2,887.16, respectively. Other actions by this provider reported at *MCLU Vol. 187, 188, 192, 194, 203, 204, 206, 207, 208*.

Physician group seeks benefits associated with emergency treatment provided to patient following traumatic boating accident that required “two extensive, complex surgical procedures.” Plaintiff alleges it is a member of a shared savings network and that [] is a client of that network. Billed charges for the first surgery were \$85,261 and the amount paid was \$2,465.28, and the billed charges for the second surgery were \$159,829 and the amount paid was \$4,552.95. Other actions filed by this provider are reported in *MCLU Vol. 159, 161, 163, 168, 171, 178, 189, 191, 192, 197, 202, 207, 208*.

Removed action in which pro se member seeks reimbursement of \$492 in late enrollment penalties and alleges he was wrongfully enrolled in a Medicare Advantage plan after indicating he did not want a Part C plan.

OON physician practice and alleged assignee seeks ERISA benefits and alleges underpayment associated with alleged emergent surgery. Billed charges were \$367,963 and the amount paid was \$11,490.49. Other actions by this provider reported at *MCLU Vol. 105, 146, 203*.

Removed action in which OON provider and alleged assignee seeks ERISA benefits associated with surgical procedure involving two patients. Both claims involved CPT codes 21147 and 21196. Billed charges on the first claims were \$331,126 and the claims were denied. Billed charges on the second claim were \$232,696 and the claims were denied.

Removed action in which network provider challenges recoupment efforts of [] on behalf of ERISA plans. Dispute involves whether or not provider’s employer testing services were non-reimbursable “back to work” testing.

Member seeks ERISA benefits associated with laminectomy. Claim was denied as “not medically necessary because he did not have instability, pressure on nerves or other conditions that might require a laminectomy or fusion.”

Removed action in which OON physician seeks \$291,521.75 in benefits and alleges underpayment with bilateral breast reduction. Billed charges were \$150,000 for each provider and the amounts paid were \$5,438.35 and \$3,039.90, respectively. Other actions by this provider reported at *MCLU Vol. 187, 188, 192, 194, 203, 204, 206, 207, 208*.

Removed action in which group of hospitals allege late and improper payments exceeding \$125 million in billed charges. Plaintiff asserts over 25,000 claims remain unpaid 180 days since the claims have been filed.

Member seeks over \$440,000 in ERISA benefits associated with residential treatment at Waypoint Academy and alleges MHPAEA violations. The claim was denied pursuant to various exclusions including that the services were an excluded benefit.

Member seeks ERISA benefits from self-funded plan associated with unspecified inpatient treatment and alleges the record did not support the administrator’s decision.

OON physician group seeks benefits associated with emergency treatment and alleges underpayment. Billed charges were \$49,200 and the amount paid was \$16,538.41. Other actions by this provider reported at *MCLU Vol. 163, 167, 168, 170, 173, 174, 175, 177*.

Pathology group seeks benefits associated with the professional component of clinical pathology services through a Multiplan network. Plaintiffs assert [] adopted an inappropriate reimbursement policy pertaining to these services that went into effect in October or November of 2021.

Removed action in which purchaser of OON provider claim and alleged assignee seeks benefits and asserts underpayment associated with treatment of 2 patients. Billed charges on claim 1 were \$24,322.69 and no payment was issued; billed charges on claim 2 were \$297,482.79 and no payment was issued.

ADDITIONAL NEWSWORTHY (REGULATORY)

Nevada Department of Health and Human Services issues regulations implementing arbitration regime concerning out-of-network emergency services. Requirements Concerning the Arbitration of Certain Disputes over Payment for Medically Necessary Emergency Services, 2022 NV Reg. Text 539375 (filed Sep. 19, 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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