

# Managed Care Litigation Update®

## NEWSWORTHY

District court denies motion to dismiss by MA plans challenging theory of false claims action in with “the Government alleges that Defendant has knowingly disregarded its duty to ensure the accuracy of the risk adjustment data that it submitted to [CMS] under the Part C plans operated by Anthem.” *United States v. Anthem Inc.*, USDC SD NY, No. 20-cv-2593-ALC, 2022 WL 4815978 (Doc. 60, filed Sep. 30, 2022).

District court grants motions to stay pending arbitration pursuant to various provider agreements where the Chickasaw Nation alleges violations of the Recovery Act against various PBMs. *Chickasaw Nation v. Caremark PHC, LLC*, USDC ED OK, No. 6:20-cv-488-PRW, 2022 WL 4624694, (Doc. 119, filed Sep. 30, 2022).

District court grants plan’s motion to dismiss putative class action asserting violations of the FFCRA and CARES Acts, holding that the “overwhelming majority of district courts have addressed the issue have found [neither of these statutes] creates a private right of action.” *Saloojas, Inc. v. Blue Shield of California Life and Health Insurance Company*, USDC ND CA, No. 3:22-cv-3267-MMC, 2022 WL 4843071, (Doc. 27, filed Oct. 3, 2022). Previously reported in *MCLU Vol. 202*.

## RECENTLY FILED ACTIONS

Removed action in which OON provider and alleged attorney in fact seeks benefits and alleges underpayment associated with “emergency services to the patient to treat the injuries to his left knee.” Billed charges were \$9,921 and no payment was made.

OON physician and alleged attorney in fact seek ERISA benefits and assert underpayment associated with emergency orthopedic surgery. Billed charges were \$210,808 and the amount paid was \$8,057.32.

OON provider group seeks benefits from county school plan and alleges underpayment associated with treatment of 3 patients involving mastectomies and breast reconstruction services. The asserted difference between billed charges and amounts paid are \$702,346.33, \$632,390.42, and \$21,293.92, respectively. Other actions filed by this provider are reported in *MCLU Vol. 159, 161, 163, 168, 171, 178, 189, 191, 192, 197, 202, 207, 208, 209*.

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## RECENTLY FILED ACTIONS

OON freestanding emergency center and alleged assignee seeks benefits and alleges underpayment associated with 884 claims where billed charges were \$17,448,589.28 and the amount paid was \$1,091,792.36.

Removed action in which OON plastic surgeon seeks benefits associated with bilateral breast reduction and alleges underpayment. Each of the two providers billed \$150,000 and no payment was made on behalf of either claim. Other actions filed by a similarly named provider reported in *MCLU Vol. 187, 188, 192, 194, 203, 204, 206, 207, 208, 209*.

Removed action in which member seeks ERISA benefits where pre-approval for medial nerve branch block was denied. Plaintiff asserts the external review upholding the denial was flawed because not all relevant records were provided.

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 two physicians, and the amounts paid were \$4,236.89 and \$523.95, respectively. Other actions by this provider reported at *MCLU Vol. 187, 188, 192, 194, 203, 204, 206, 207, 208, 209*.

Member seeks ERISA benefits associated with residential treatment received at Elevations Residential Treatment Center and alleges violations of MHPAEA. Coverage was provided from November 2, 2020 to December 8, 2020 but denied thereafter for lack of medical necessity pursuant to The American Academy of Child and Adolescent Psychiatry (AACAP) Child and Adolescent Service Intensity Instrument Version 4.1 for Level 5.

Removed action in which member seeks benefits associated with treatment following car accident. Plaintiff alleges 2-year period of record requests and delayed denial of claims.

Removed action in which DME provider seeks \$1,513,009.40 overdue associated with over 7,000 claims. Plaintiff alleges it was inappropriately and unlawfully put on prepayment review and that it has been overwhelmed with document requests.

Removed action in which hospital system seeks benefits and alleges underpayment of 48 claims. The hospitals were in-network with [ ] Blue Cross, and those contracts required that treatment be provided to members of other BCBS entities such as [ ]. Patient alleges an underpayment of \$572,056.18 based on the contract rates. Billed charges were \$3,028,457.45 and the amount paid was \$140,416.32.

Member seeks ERISA benefits associated with immunoglobulin infusions where plan had previously permitted treatment in a network hospital but now must be obtained through limited pharmacies and facilities.

Removed action in which member seeks ERISA benefits associated with emergency treatment provided in the Dominican Republic along with reimbursement of air ambulance. Basis of denial or non-payment is not stated in underlying complaint.

Mental and behavioral health provider and alleged assignee seeks ERISA benefits associated with treatment of 9 members pertaining to 430 “separate occasions.” Total billed charges were \$1,959,875 and the amount paid was \$11,937.72.

Removed action in which member seeks benefits from short-term policy associated with treatment of “severe cervical stenosis at C4-5, C5-6” that resulted in two surgeries. Coverage was denied on grounds of a pre-existing condition.

Hospital that is in network with [] alleges breach of implied contract and underpayment for claims associated with out-of-state [] entity. Billed charges were \$815,238.47 and the amount paid was \$34,607.83.

OON plastic surgeon and alleged assignee seeks ERISA benefits associated with breast surgery to treat “capsular contracture and breast ptosis” and alleges underpayment. The allowed amount on CPT 19371-50 was \$1,516.07 but plaintiff asserts the Fair Health median is \$34,000.

Removed action in which OON interpreters of EKGs and echocardiograms asserts underpayment where billed charges for CPT code 93010 were \$33 and the amount paid was \$8.76.

Member seeks ERISA benefits associated with residential treatment at Elevations Residential Treatment Center. The claim was denied as not medically necessary pursuant to the Optum Level of Care Guideline for the Mental Health Residential Treatment Center Level of Care.

## ADDITIONAL NEWSWORTHY (REGULATORY)

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Kentucky Cabinet for Health and Family Services adopts Medicaid prescription drug reimbursement regime permitting the selection of single PBM for managed care population, amending 907 KAR 23:020. Reimbursement for Outpatient Drugs, 49 KY.R. 820, (published Oct. 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.

# MCLU is online and searchable.

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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

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**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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