

Managed Care Litigation Update®

NEWSWORTHY

District court grants, in part, motions to dismiss filed by ERISA plans where “out of network, out of service area, health care provider for complex surgical services” alleged underpayment, holding that 29 USC 1133 does not confer a private right of action and that the administrators were not fiduciaries. *Advanced Orthopedics and Sports Medicine Institute, et al. v. Anthem Blue Cross Life and Health Insurance Company, et al.*, USDC D. NJ, No. 20-cv-13243-FLW, 2022 WL 13477952, (Doc. 62, filed Oct. 21, 2022). Previously reported at *MCLU Vol. 161*.

District court affirms denial by ERISA plan of claims for Azithromycin where plaintiff failed to file an internal appeal and failed to demonstrate that doing so would be futile. *Fischer v. Rocky Mountain Hosp. and Medical Service, Inc.*, USDC D. CO, No. 21-cv-1489-CMA-MEH, 2022 WL 13682928, (filed Oct. 21, 2022). Previously reported at *MCLU Vol. 178*.

Department of Justice intervenes in FCA action alleging Cigna included invalid patient diagnosis information to inflate Medicare Advantage payments through its risk adjustment data, asserting that Cigna relied on vendors to conduct in-home assessments who did not order the testing, imaging, or other diagnostic steps necessary to reliably diagnose the conditions listed. *United States v. Cigna Corporation, et al.*, USDC MD TN, No. 3:21-cv-748, (Doc. 178, filed Oct. 14, 2022).

RECENTLY FILED ACTIONS

OON physician and alleged assignee seeks ERISA benefits associated with back surgery to treat “severe left-sided paracentral L4-L5 disk herniation with left lower extremity radiculopathy.” Billed charges were \$125,980. The claim was denied as not medically necessary on the grounds there was no documented stenosis.

Member seeks ERISA benefits associated with residential treatment at Elevations Seven Stars. The claim was denied as not medically necessary pursuant to the 2019-2020 Magellan Care Guidelines as adopted by []’s MHS – Residential Behavioral Health, Child or Adolescent.

Removed action in which OON physician and alleged assignee seeks benefits and asserts underpayment associated with bilateral breast reduction. Billed charges were \$85,134 for each of the surgeons, and the amounts paid were \$24,785.37 and \$2,761.92, respectively. Other actions by this provider reported at *MCLU Vol. 187, 188, 192, 194, 203, 204, 206, 207, 208, 209*.

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RECENTLY FILED ACTIONS

Member seeks ERISA benefits associated with residential treatment at Innercept and alleges violations of the California mental health parity act and the MHPAEA. The claim was denied for lack of accreditation, but plaintiff claims accreditation is not a requirement in the plan.

Removed action in which member seeks ERISA benefits and alleges he was inappropriately double-charged his \$3,575 deductible because the deductible restarted for purposes of his COBRA benefits.

Removed putative class action in which laboratory alleges wrongful denials and underpayment of claims including Covid-19 testing and asserts “millions” in damages.

Removed action in which OON physician asserts underpayment associated with emergency treatment provided to two newborns who presented with hypoplastic aortic arch and renal failure. Billed charges on the first patient were \$21,275 and the amount paid was \$1,619.27, and billed charges on the second patient were \$58,575 and the amount paid was \$8,626.59.

OON neurosurgeon and alleged assignee seeks ERISA benefits associated with alleged emergency laminectomy and discectomy. Billed charges were \$129,240 and the amount paid was \$3,277.14.

OON surgeon seeks benefits and alleges underpayment associated with emergency treatment provided following motorcycle accident. Billed charges were \$310,402 and the amount paid was \$10,644.42.

OON air ambulance provider challenges arbitration award under No Surprises Act regime where arbitrator chose the QPA and allowed amount of \$11,172.67 in lieu of provider’s offer of \$36,518.

Member seeks over \$165,000 in ERISA benefits from self-funded plan associated with residential treatment at Triumph Youth Services and asserts violations of MHPAEA. The claim was denied on the grounds Triumph did not satisfy the plan’s definition of residential treatment facility.

Removed action in which plastic surgeon seeks benefits and alleges underpayment associated with bilateral breast reduction. Billed charges were \$150,000 for each surgeon, and the amounts paid were \$5,514.06 and \$64,397.81, respectively. Other actions by this provider reported at *MCLU Vol. 187, 188, 192, 194, 203, 204, 206, 207, 208*.

Member seeks ERISA benefits from self-funded plan associated with residential treatment at Second Nature Wilderness Family Therapy and Catalyst RTC and alleges violations of MHPAEA. The Second Nature claim was denied pursuant to a wilderness therapy exclusion, and the Catalyst claim was denied as not medically necessary.

Member seeks \$87,438 in ERISA benefits associated with residential substance abuse treatment at Red Oak Recovery. The claim was denied for lack of medical necessity.

Member seeks \$75,334 in ERISA benefits associated with back surgery where plaintiff alleges prior approval was received. The claim was denied as out-of-network.

ERISA plan seeks recovery of benefits paid for services to alleged employee spouse and child of employee where plan asserts the employee fraudulently misrepresented spousal and parent relationship where none existed.

Removed action in which OON in-home provider of pediatric services seeks \$883,400 in alleged underpayment associated with treatment of one patient. Plaintiff asserts that plan had paid the claims at a rate of \$108 per hour through 2020 and 2021 but altered the rate to \$13 per hour without explanation for 2022.

Removed action in which member seeks ERISA benefits associated with “a right-sided injection to destroy nerves in in his lower back.” Basis of denial is not stated in underlying complaint.

Removed action in which physician asserts underpayment associated with treatment for substance abuse. Plaintiff alleges less than 1% of billed charges have been paid.

Removed action in which OON plastic surgeon alleges underpayment associated with bilateral breast reduction and placement of a vacuum dressing. Billed charges were \$150,000 for each of the providers and the amounts paid were \$2,227.64 and \$571.50, respectively. Other actions by this provider reported at *MCLU Vol. 187, 188, 192, 194, 203, 204, 206, 207, 208, 209*.

Removed action in which OON plastic surgeon alleges underpayment associated with reduction mammoplasty bilateral. Billed charges were \$150,000 for each of the providers and the amounts paid were \$1,316.10 and \$6,623.71, respectively. Other actions by this provider reported at *MCLU Vol. 187, 188, 192, 194, 203, 204, 206, 207, 208, 209*.

ADDITIONAL NEWSWORTHY (REGULATORY)

Colorado Department of Regulatory Agencies adopts rules implementing surprise billing protections and aligning state law with federal No Surprises Act. 3 CO ADC 707-1:1.37, 2022 CO Reg. Text 622182. (filed Oct. 25, 2022). See also 4 CO ADC 726-1:1.12, 2022 CO Reg. Text 622159.

[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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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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