

Managed Care Litigation Update®

NEWSWORTHY

District court certifies class of similarly situated people denied gender-affirming care in a self-funded ERISA plan pursuant to an allegedly discriminatory exclusion in violation of Section 1557. *Patricia Pritchard v. Blue Cross Blue Shield of Illinois*, USDC WD WA, No. 3:20-cv-6145-RJB, 2022 WL 16835839 (Doc. 113, filed Nov. 9, 2022). Previously reported at *MCLU Vol. 165*.

District court grants motion for summary judgment, in part, holding that ERISA plan “failed to make adequate findings or explain sufficiently its decision to deny benefits” concerning residential care, finding the decision was arbitrary and capricious and remanding to the administrator. *Daniel B., et al. v. United Healthcare, et al.*, USDC D UT, No. 2:20-cv-606-DBB-CMR, 2022 WL 4484622 (Doc. 79, filed Sep. 27, 2022). Previously reported at *MCLU Vol. 159*.

District court grants motion for summary judgment holding that ERISA plan’s denial of residential treatment claim was arbitrary and capricious, in part because plan failed to engage with opinions of the member’s treating physicians prior to issuing denial. *Theo M. v. Beacon Health Options*, USDC D UT, No. 2:19-cv-364-JNP-DBP, 2022 WL 4484517 (Doc. 72, Sep. 27, 2022).

RECENTLY FILED ACTIONS

Removed action in which laboratory alleges underpayments and wrongful denials associated with Covid-19 testing and alleges violations of the FFCRA and CARES Act. Other action by this provider reported at *MCLU Vol. 211*.

OON air ambulance provider challenges decision of NSA arbitrator in favor of ERISA plan holding that qualifying payment amount (“QPA”) was appropriate amount.

Member seeks over \$250,000 in ERISA benefits associated with residential treatment at Austen Riggs Center in Massachusetts for behavioral health treatment of co-morbid psychiatric conditions. Coverage was provided from August 30, 2021 to September 21, 2021 but denied thereafter as not medically necessary pursuant to the “[] care guidelines Residential Acute Behavioral Health level of Care (Adult) 24th Edition.”

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RECENTLY FILED ACTIONS

Removed action in which Nurse Registry seeks emergency injunctive relief to prevent TPA, as administrator of VA benefits, from terminating vendor's services on the grounds vendor is not eligible to provide services under the VA Community Care Network.

Removed action in which OON ambulatory surgical center seeks benefits with respect to the facility fee portion of two claims. Plaintiff alleges the claims have not been processed and are deemed denied.

Removed action in which member challenges subrogation lien arising from FEHBA plan.

Removed action in which OON plastic surgeon and alleged assignee seeks benefits and alleges underpayment associated with bilateral breast reduction. Billed charges were \$150,000 for each provider, and the amounts paid were \$1,184.48 and \$315.86, respectively. Other actions by this provider reported at *MCLU Vol. 187, 188, 192, 194, 203, 204, 206, 207, 208, 209*.

Member seeks over \$110,000 in ERISA benefits associated with residential treatment at Fulshear Treatment to Transition and alleges violations of MHPAEA. The claim was denied not medically necessary.

Member seeks ERISA benefits associated with residential treatment at Solacium Sunrise Residential Treatment Center. Coverage was provided from February 18, 2020 through April 19, 2020 but denied thereafter as not medically necessary.

Removed action in which back surgeon seeks benefits and alleges underpayment associated with two preauthorized back surgeries. Billed charges for the first surgery were \$140,000 and the amount paid was \$5,420.54, and billed charges for the second surgery were \$80,000 and the amount paid was \$112.34. Other actions by this provider reported at *MCLU Vol. 162, 191, 202, 206, 208*.

Removed action in which OON hospital seeks \$2,800,598.65 in benefits associated with 168-day stay of member. Plaintiff asserts that the plan offered "pennies on the dollar as reimbursement" and that the offer was rejected.

Hospital contracted with BCBS [] seeks \$169,875.74 in benefits from BCBS [] concerning treatment of three patients. The disputes involve the medically necessary length of the inpatient admissions. **DISCLOSURE – I am counsel for the Defendant.**

Removed action in which member seeks ERISA benefits associated with treatment for injuries resulting from automobile accident. The underlying complaint does not state the basis of the nonpayment or denials.

Removed action in which contracted hospital group seeks over ten million dollars in alleged unpaid accounts receivable. Plaintiff asserts breach of contract.

Removed action in which member seeks \$95,775 in ERISA benefits associated with back surgery. Claim was denied as not medically necessary.

Removed action in which OON plastic surgeon seeks benefits associated with bilateral breast reduction and alleges underpayment. Billed charges were \$150,000 for each of the providers. Paid amounts were \$2,820.20 and \$96.26, respectively. Other actions by this provider reported at [MCLU Vol. 187, 188, 192, 194, 203, 204, 206, 207, 208, 209](#).

Member seeks over \$260,000 in ERISA benefits associated with residential treatment at Intermountain Children's Home and alleges violations of MHPAEA. Coverage was provided from November 18, 2019 through January 20, 2019 but denied thereafter as not medically necessary pursuant to the LOCAT guidelines and because the care was custodial.

OON ambulatory surgical center and alleged assignee seeks \$142,116.95 in ERISA benefits and alleges underpayment associated with treatment of six patients. Plaintiff asserts counts under section 1132(a)(1)(B) and breach of fiduciary duty.

[] seeks recovery of Medicare Part C and D benefits where it alleges pharmaceutical company engaged in illegal waiver of co-payments through use of a patient charity in violation of the Anti-Kickback Statute and False Claims Act.

Removed action in which hospital seeks benefits and alleges wrongful denial of claim associated with preapproved extended care of a newborn. Billed charges were \$183,856.17.

Removed action in which member seeks ERISA benefits following automobile accident. Outstanding bills are \$23,751.21 and \$18,996.80.

[] seeks recovery of Medicare Part D benefits where it alleges pharmaceutical company engaged in illegal waiver of co-payments through use of a patient charity in violation of the Anti-Kickback Statute and False Claims Act.

OON physician challenges arbitration award under the No Surprises Act and asserts underpayment of emergency services. Plaintiff asserts the one-sentence written award failed to address the statutory factors.

ADDITIONAL NEWSWORTHY (REGULATORY)

Pennsylvania legislature issues revisions to its utilization review, appeal, and grievance requirements broadly applicable to certain state commercial plans and Medicaid and CHIP plans. PA Act No. 2022-146 (S.B. No. 225) (approved Nov. 3, 2022).

[Mitchell Hasenkamp](#) 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



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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