

Managed Care Litigation Update®

NEWSWORTHY

Ninth Circuit issues unpublished opinion affirming enforcement of anti-assignment provision, finding that unlike in *Beverly Oaks*, provider did not engage in the administrative claims process or otherwise indicate it was acting as an assignee. *Brand Tarzana Surgical Institute, Inc. v. Int'l Longshore & Warehouse Union-Pacific Maritime Ass'n. Welfare Plan, et al.*, USAC 9th Cir., No. 22-55211, 2022 WL 17538750, (Doc. 44, filed Dec. 8, 2022).

Eight Circuit affirms decision granting permanent injunction in favor of plaintiffs objecting to coverage of gender-transition procedures, holding that the HHS implementation of Section 1557 and Title VII violate the Religious Freedom Restoration Act of 1993. *The Religious Sisters of Mercy, et al. v. Becerra, et al.*, USAC 8th Cir., No. 21-1890, 2022 WL 17544669, (Doc. 5225412, filed Dec. 9, 2022).

New York state court dismisses claim of plastic surgeon and holds that letter issued to beneficiary granting an in-network exception did not defeat ERISA preemption, nor could it be the basis of a breach of contract claim or claim for promissory estoppel. *Norman Maurice Rowe, M.D., M.H.A., LLC v. Oxford Health Insurance Company, Inc., et al.*, NY Sup. Ct., No. 713556/21, 2022 WL 17411567, (filed Nov. 30, 2022).

District court dismisses claim of Medicare Advantage beneficiary who challenged the denial of certain dental treatment, holding that plaintiff failed to demonstrate he exhausted administrative remedies and therefore could not establish subject matter jurisdiction. *Rong Zhang v. UnitedHealthCare*, USDC D. AZ, No. 20-cv-2064-PHX-GMS, 2022 WL 17537985, (Doc. 38, filed Dec. 8, 2022). Previously reported in *MCLU Vol. 163*.

RECENTLY FILED ACTIONS

Two members seek ERISA benefits and allege underpayment associated with separate back surgeries for which plaintiffs allege they are being balance billed. Billed charges on the first plaintiff for both the surgeon and the Physician Assistant were \$157,934, and the amounts paid were \$3,723.39, and \$14,000, respectively. Billed charges on the first plaintiff for both the surgeon and the Physician Assistant were \$157,934, and nothing was paid on either claim.

Removed action in which hospital seeks over \$4 million in alleged underpayments associated with emergency and post-stabilization services. Plaintiff asserts claims for unjust enrichment, quantum meruit, breach of oral contract, breach of implied contract, open account, negligent misrepresentation, and promissory estoppel.

Removed action in which member challenges subrogation rights of ERISA plan following settlement of medical malpractice claim.

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RECENTLY FILED ACTIONS

Removed action in which member seeks ERISA benefits associated with recommendation for “laminotomy/foraminotomy with a two-level anterior lumbar fusion” where authorization was denied as not medically necessary.

Removed action in which member seeks ERISA benefits associated with surgery. The claim was denied as not covered.

Putative class action in which self-funded plans allege violations of sections 404 and 406 of ERISA and assert the administrators have inconsistently and inappropriately applied repricing agreements to the detriment of the plans. Plaintiffs further assert the administrators have failed to provide claims data as required by the TPA agreements.

Removed action in which podiatrist seeks ERISA benefits and alleges underpayment. Billed charges were \$155,900 and \$41,450 for the providers, and the amounts paid were \$6,099.21 and \$1,099.79, respectively.

Removed action in which emergency medical group seeks benefits and alleges underpayment associated with 26 claims. Plaintiffs assert violations of Florida state law and breach of implied contract.

Removed action in which OON surgery center seeks approximately \$900,000 in alleged underpayments. Total billed charges were \$865,550 and the total amounts paid were \$74,110.04.

Pro se member seeks ERISA benefits and alleges he was wrongly denied unspecified medical services for three years.

Removed action in which OON neurosurgeons seek ERISA benefits and allege underpayment associated with treatment performed by surgeon and physician assistant. Billed charges for the primary surgeon were \$41,233 and the amount allowed was \$6,556, and billed charges of the assistant were \$2,913.44, but no payment was issued for the assistant.

OON emergency provider group seeks ERISA benefits and alleges underpayment. Billed charges were \$158,644 and the amount paid was \$3,533.33. Other actions filed by this provider are reported in *multiple MCLU Vols.*

Member challenges denial of ERISA benefits associated with prescription for Ozempic. Claim was denied as experimental because the member did not have type-2 diabetes but instead was pre-diabetic with insulin resistance.

Member seeks ERISA benefits associated with general sedation portion of oral surgery claim. Plaintiff’s underlying complaint does not state the basis of denial.

Removed action in which OON emergency services group seeks benefits and alleges underpayment of 21 claims for anesthesia services. Other actions by this provider reported in *MCLU Vol. 139, 141, 143, 147, 148, 149, 165, 174, 180, 214*.

Removed action in which OON plastic surgeon seeks benefits and alleges underpayment associated with bilateral breast mammoplasty. Billed charges were \$85,134 for each of the co-surgeons, and the amounts paid were \$12,388.25 and \$9,028.79, respectively. Other actions by this provider reported at *MCLU Vol. 187, 188, 192, 194, 203, 204, 206, 207, 208, 209, 212, 213*.

Removed action in which hospital seeks ERISA benefits and asserts underpayment associated with 3 healthcare claims. Plaintiff asserts it is contracted with the host Blue Cross entity and that it was bound to provide services, but no compensation was received on billed charges of \$133,685.57, which is discounted to \$78,737.20 pursuant to its contract.

Removed action in which member alleges underpayment of ERISA benefits following motor vehicle accident. The basis of payment or denials is not stated in the underlying complaint.

Removed action in which member seeks ERISA benefits and asserts she is being balance billed \$30,457.49 for services that should have been covered. Neither the nature of the services nor the basis of denial or underpayment are stated in the underlying complaint.

Medicare plan seeks reimbursement and alleges wrongful kickback scheme in which patients' cost-sharing was eliminated through co-payment assistance, artificially increasing demand for defendant's Pulmonary Arterial Hypertension drugs.

Removed action in which OON plastic surgeon seeks benefits and alleges underpayment associated with bilateral breast reduction. Billed charges were \$150,000 for each co-surgeon. The amounts paid were \$45,996.95 and \$26,604.38, respectively.

ADDITIONAL NEWSWORTHY (REGULATORY)

HHS issues notice of proposed rulemaking to align the confidentiality requirements of substance use disorder treatment records with the requirements under HIPAA. Confidentiality of Substance Use Disorder (SUD) Patient Records, 87 Fed. Reg. 74216-01, (issued Dec. 2, 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



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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