

# Managed Care Litigation Update<sup>®</sup>

## NEWSWORTHY

A unanimous Texas Supreme Court affirmed the Court of Appeal's decision, holding that three sections of the Texas Insurance Code, referred to as the Emergency Care Statutes (requiring a health insurance company to pay non-network physicians for emergency care at the usual and customary rate) do not authorize a private right of action by physicians against insurers for payment of claims that accrued prior to January 2020. The Texas Supreme Court also held that the physician-plaintiffs' claims for recovery in quantum meruit and for unfair settlement practices fail as a matter of law. *Tex. Med. Res., LLP v. Molina Healthcare of Tex., Inc.*, No. 21-0291, 2023 WL 176287 (Tex. Jan. 13, 2023). **DISCLOSURE – I represent the Respondent, Molina Healthcare of Texas, Inc.**

District court dismisses, in part, putative class action claims challenging Aetna's use of Clinical Policy Bulletins ("CPBs") in determining medical necessity for purposes of ERISA policies, holding that plaintiff could only challenge the use of CPBs with respect to the rehabilitation therapy denied to the named plaintiff. *Dennis E. Curtis, et al. v. Aetna Life Insurance Company*, USDC D. CT, No. 3:19-cv-1579-MPS, 2023 WL 34662, (Doc. 74, filed Jan. 4, 2023). Previously reported in *MCLU Vol. 138*.

District court dismisses implied contract claims against ERISA plans where provider alleged the plans failed to pay the Multiplan contract rate for services to beneficiaries whose insurance cards contained the Multiplan logo. *Atlantic Neurosurgical Specialists, P.A. v. [ ] Connecticut General Life Insurance Company, et al.*, USDC SD NY, No. 20-cv-10685, 2023 WL 160084, (Doc. 98, filed Jan. 11, 2023). Previously reported at *MCLU Vol. 167*.

## RECENTLY FILED ACTIONS

Hospital seeks benefits and alleges underpayment associated with three members. Plaintiff asserts it is in network with the host BCBS plan but that the home plan has not followed that provider agreement.

Former member seeks approximately \$35,000 in ERISA benefits associated with a 4-month hospitalization in Brazil where plaintiff alleges the claims for reimbursement through the Blue Cross Global Claims program were "effectively denied" when the plan cancelled the policy.

Member seeks COBRA benefits associated with counseling services where member asserts claims were paid through her employment but denied once COBRA coverage purportedly became effective. The basis of denial is not stated in the complaint.

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## RECENTLY FILED ACTIONS

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Removed action in which purchaser of physician's claims and alleged assignee seeks ERISA benefits and alleges underpayment of CPT codes 43239 and 45380. Billed charges were \$33,000 and the amount paid by the plan was \$0.

Removed action in which member seeks \$81,650 in ERISA benefits associated with facial injuries following automobile collision. The complaint does not state the basis of denial or nonpayment.

Member seeks ERISA benefits associated with residential treatment at BlueFire Wilderness, La Europa Academy, and Optimum Performance Institute and asserts violations of California and federal mental health parity acts. Plaintiff's claims at BlueFire were denied pursuant to a wilderness therapy exclusion. The claims at Optimum were denied as not medically necessary. Plaintiff asserts the claims at La Europa were processed "inconsistently and incorrectly."

OON plastic surgeon seeks ERISA benefits and alleges underpayment of claims associated with emergency hand surgery following lawn mower accident. Billed charges were \$21,880 and the amount paid was \$1,013.47. Other actions by this provider reported in *MCLU Vol. 118, 124, 137, 138, 145, 147, 148, 152, 160, 165, 171, 180, 202*.

Member seeks ERISA benefits associated with hospitalization of autistic child and alleges the denial will result "in an un-timely discharge against the recommendations of medical treating physicians including a psychiatrist." Plaintiff further alleges an associated claim for medical transport was wrongfully denied.

Member of city governmental plan seeks benefits associated with prescriptions of Xeljanz and Cosentyx to treat diagnosed rheumatoid and psoriatic arthritis and plaque psoriasis. The basis of denials is not stated in the complaint.

Member seeks \$33,171 in ERISA benefits from self-insured plan where plaintiff asserts the claims were for "medically necessary emergency medical services." The complaint indicates that the denial stated, in part, that "observation care greater than 48 hours is considered not medically appropriate and not covered."

Removed action in which member seeks "in excess of \$600,000" in benefits associated with claims following motorcycle accident. The basis for the denials is not stated in the underlying complaint.

Removed action in which member seeks COBRA benefits following claims for pregnancy and delivery. Plaintiff asserts that she was sent a notice of termination for late payments due to an increase in premiums but that all premiums were timely and appropriately paid.

Removed action in which OON plastic surgeon seeks benefits and alleges underpayment associated with preapproved "bilateral reduction mammoplasty with wise pattern skin excision and inferior dermal glandular pedicle." Billed charges were \$35,143.72 and the amount paid was \$3,046.95.

Member seeks ERISA benefits associated with dorsal root ganglion stimulation to treat pelvic floor myalgia. Authorization was denied as not medically necessary.

Removed action in which OON physician seeks benefits and alleges underpayment associated with preapproved back surgery. Billed charges were \$142,072 and the amount paid was \$1,383.53. Other cases by this provider reported at *MCLU Vol. 95, 130, 139, 147, 151, 162, 166, 180, 187, 195, 197, 199, 215*.

OON head and neck surgeon and alleged assignee seeks ERISA benefits and alleges underpayment associated with 13 claims involving 9 beneficiaries. Some of the codes billed include 99214, 31237, 30465, and 30140.

Removed action in which OON physician seeks benefits and alleges underpayment of \$221,575.41 for emergency services provided to members. Plaintiff asserts claims for implied contract, quantum meruit, unjust enrichment, implied covenant of good faith and fair dealing, estoppel, and unfair business practices. Other cases filed by this provider reported at MCLU Vol. provider reported in *MCLU Vol. 28, 37, 39, 40, 60, 127, 157, 163*.

OON hospital seeks \$15,830.69 in ERISA benefits associated with claim for surgery that was denied as out-of-network. Plaintiff asserts it is the only place that had the necessary equipment to perform the surgery. Other actions by this provider filed in *multiple MCLU Vols*.

## ADDITIONAL NEWSWORTHY (REGULATORY)

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DHHS issues notice of proposed rulemaking regarding modifications to the May 21, 2019 rule on Protecting Statutory Conscience Rights in Health Care; Delegations of Authority. The Department noted that the 2019 rule never went into effect but that certain provisions pertaining to an expansion of conscience protection statutes, complaint handling, and voluntary notice provisions should be retained while the remainder of the 2019 rule should be rescinded or clarified. Safeguarding the Rights of Conscience as Protected by Federal Statutes, 88 Fed. Reg. 820-01, (issued Jan. 5, 2023).

[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

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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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