

Managed Care Litigation Update®

NEWSWORTHY

District court grants motion for summary judgment in favor of ERISA plan, which is defending denial of residential care claims for lack of medical necessity. The Court held that the plan did not abuse its discretion. *Howard W., et al. v. Providence Health Plan, et al.*, USDC WD WA, No. 2:21-cv-1346-JHC, (Doc. 68, filed Jan. 23, 2023).

District court grants, in part, plan's motion to dismiss counterclaims of OON Covid testing laboratory, finding that there is no private right of action under the CARES Act and that correspondence concerning the claims did not create contract to pay advertised charges. *BCBSM, Inc. v. GS Labs, LLC*, USDC D. MN, No. 0:22-cv-513-ECT-DJF, 2023 WL 1110453, (Doc. 68, filed Jan. 30, 2023). Previously reported at *MCLU Vol. 196*.

District court grants motion to dismiss breach of fiduciary duty claims against ERISA plan where plaintiffs assert a putative class action challenging underpayment of post-mastectomy claims of co-surgeons. *Joseph F. Tamburrino, M.D., et al. v. United Healthcare Insurance Company*, USDC D. NJ, No. 2:21-cv-12766-SDW-ESK, (Doc. 51, filed Jan. 26, 2023). Previously reported at *MCLU Vol. 179*.

RECENTLY FILED ACTIONS

Removed action in which OON plastic surgeon seeks benefits and asserts underpayment associated with bilateral breast reduction. Billed charges were \$150,000 for each co-surgeon, and the amounts paid were \$35,127.92 and \$1,773.81, respectively. Other actions by this provider reported at *MCLU Vol. 187, 188, 192, 194, 203, 204, 206 – 215*.

Please join me on March 29 – 30, 2023 at the ACI Managed Care Disputes and Litigation Conference in Chicago, IL. It promises to be another unparalleled learning experience.

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RECENTLY FILED ACTIONS

OON neurologist seeks benefits and alleges underpayment of emergency brain surgery following stroke. Billed charges were \$128,000 and the amount paid was \$1,395.67. Other actions by this provider reported in *MCLU Vol. 77, 79, 80, 84, 113, 154, 157, 158, 160, 171, 177, 209*.

Member seeks Medicare Advantage benefits for inpatient rehabilitation following cardiac arrest event. Plaintiff asserts her MA plan inappropriately applied an "Improvement Standard" in denying the authorization request as not medically necessary.

Removed action in which OON plastic surgeons seek ERISA benefits and alleges underpayment associated with bilateral breast reduction. The providers billed \$89,412 and \$85,134, respectively, and the amounts paid were \$33,840.77 and \$2,525.85, respectively. Other actions by this provider reported at *MCLU Vol. 187, 188, 192, 194, 203, 204, 206, 207, 208, 209, 212-216*.

[Health insurer] alleges breach of Stand Down Agreement ("SDA") following a withdrawn arbitration concerning allegations of a laboratory's fraudulent claims and associated billing disputes. [] seeks to enjoin the arbitration filed against it allegedly in violation of the SDA.

Removed action in which various OON hospitals seek over \$10,000,000 associated with four years of allegedly underpaid emergency and post-stabilization claims. Plaintiffs assert they are bringing the claims in their own right and not as assignees.

Removed action in which provider group seeks over \$1,127,263 in benefits associated with unspecified claims. Plaintiff's causes of action include breach of contract, breach of third-party beneficiary contract, unjust enrichment, quantum meruit, and account stated.

Member seeks ERISA benefits associated with pre-authorized facial surgery. Plaintiff asserts the plan indicated the procedure would be covered at the network level but was not.

Member seeks ERISA benefits associated with residential care at Red Mountain Colorado and alleges violations of the MHPAEA. The claim was denied on the grounds the facility did not meet the definition of Residential Treatment Center for purposes of coverage, but plaintiff asserts the restrictions on coverage for residential treatment were stricter than those for medical or surgical analogues.

Removed action in which physician seeks ERISA benefits and alleges the claims arise "out of the []'s interactions with []." Plaintiff alleges the plan promised to pay UCR but then underpaid. Other actions by this provider reported at *MCLU Vol. 97, 100, 102, 113, 128, 129, 165, 166, 167, 188, 203, 207*.

Removed action in which 25 OON emergency physician groups seek benefits and allege underpayment of emergency claims. Plaintiffs allege “improper claims adjudication policies and practices to uniformly and artificially downgrade and underpay providers’ claims” such as a “imposing increased administrative burdens on any ‘Level 5’ emergency department claim.”

Member seeks ERISA benefits associated with claim for Applied Behavioral Analysis therapy. The basis of denial is that the member “has not gotten better” with the prior ABA therapy and that “Care is being used to keep you safe only.”

Removed action in which OON laboratory seeks ERISA benefits and alleges underpayment associated with claims for laboratory toxicology services. Plaintiff asserts causes of action for implied contract, quantum meruit, CA Business and Professions Code section 17200, and breach of written contract.

OON surgeon seeks benefits and alleges underpayment associated with emergency abdominal surgery. Billed charges were \$154,107.29 and the allowed amount was \$6,722.79.

Removed action in which provider group seeks \$105,904 and alleges underpayment of unspecified claims. Plaintiff asserts breach of contract, breach of third-party beneficiary contract, unjust enrichment, quantum meruit, and account stated. Other actions by this provider reported at *MCLU Vol. 157, 168*.

Removed action in which plastic surgeon group seeks \$1,646,356.97 in ERISA benefits and alleges underpayment associated with 83 claims.

Removed action in which physician seeks ERISA benefits and alleges underpayment of claim involving preauthorized craniectomy. Billed charges were \$65,450 and the amount paid was \$353.21. Plaintiff asserts the plan attempted to withdraw the in-network exception following the surgery.

Member seeks over \$50,000 in ERISA benefits associated with residential treatment at Evoke at Entrada and alleges violations of the MHPAEA. The claim was denied on the grounds the wilderness therapy was experimental.

Pro se member alleges complaints about a lack of yearly medical assessments and prescription monitoring prior to psychotic break and schizophrenia diagnosis.

Member seeks over \$100,000 in ERISA benefits associated with claim for residential treatment where the claim was denied for lack of medical necessity.

Member seeks over \$200,000 in ERISA benefits associated with residential treatment at Innercept and alleges violations of MHPAEA. The claim was denied as not medically necessary.

ADDITIONAL NEWSWORTHY (REGULATORY)

Michigan legislature passes act to license PBMs and require reporting of rebates and pharmacy network adequacy, effective January 1, 2024. 2022 Mich. Legis. Serv. P.A. 11 (H.B. 4348).

[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-DER, (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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