

Managed Care Litigation Update[®]

NEWSWORTHY

District court grants summary judgment to TPA of ERISA plans where members alleged putative class action challenging UMR's level of care guidelines for residential treatment of mental health and substance abuse disorders, holding that the adoption of the guidelines was consistent with the plans' terms and that the denials of plaintiff's specific claims were a proper exercise of discretion. *Luciana Berceanu, et al. v. UMR, Inc.*, USDC WD WI, No. 3:19-cv-568-wmc, 2023 WL 1927693, (Doc. 169, filed Feb. 10, 2023).

District court vacates revised rule implementing the No Surprises Act on the grounds that "[a]lthough the Departments have abandoned the 'rebuttable presumption' term, they have not relinquished their goal of privileging the QPA, tilting arbitrations in favor of insurers, and thereby lowering payments to providers." *Texas Medical Ass'n, et al. v. United States Dep't of Health and Human Svcs, et al.*, USDC ED TX, No. 6:22-cv-372-JDK, 2023 WL 1781801, (Doc. 99, filed Feb. 6, 2023).

District court dismisses underpayment claims of laboratory challenging reimbursement amounts for COVID testing, permitting leave to amend only a single state law claim. The court held plaintiff did not have ERISA standing as it did not possess assignments. *Saloojas, Inc. v. Aetna Health of California, Inc.*, USDC ND CA, No. 3:22-cv-2887-JSC, 2023 WL 1975248, (Doc. 54, filed Feb. 13, 2023). Previously reported at *MCLU Vol. 201*.

RECENTLY FILED ACTIONS

OON mental health treatment facilities and laboratories allege RICO conspiracy to force plaintiffs out of business and avoid "paying over \$65 million in legitimate mental health claims." Plaintiffs allege defendants misused the special investigations unit to deny legitimate claims. Other actions by these providers reported at *MCLU Vol. 152, 163, 192, 195, 197*.

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.

<https://www.americanconference.com/managed-care-disputes-litigation/>

READERS OF THIS PUBLICATION CAN OBTAIN DISCOUNT PRICING BY USING CODE D10-999-MCLU



RECENTLY FILED ACTIONS

PBM seeks arbitration with participating pharmacy regarding disputed reimbursements for prescription drugs pursuant to arbitration provision in provider manual.

Member seeks approximately \$25,000 in benefits associated with OON therapy and alleges the charges were covered under the plan's mental health and behavioral health benefits. Plaintiff further alleges the response to her claims were delinquent.

Removed action in which OON emergency physician alleges underpayment of claims and alleges associated violations of California state law.

OON emergency physician and alleged assignee seeks benefits and alleges underpayment of 3 claims. Billed charges were \$10,167, \$10,167, and \$9,950, respectively, and the amounts paid were \$874.90, \$874.90, and \$1,496.73, respectively.

Member seeks ERISA benefits associated with jaw surgery and alleges "Defendant's discounts/denial of benefits were in violation of relevant legal standards." The basis of payment or denials is not stated in the complaint.

Removed action in which OON seeks benefits and alleges underpayment associated with surgeries involving 2 patients. Billed charges on the first claim were \$37,000 and the amount paid was \$2,932.52. Billed charges on the second claim were \$88,000 and the amount paid was \$2,623.63. Plaintiff asserts the entire billed charges on both claims were allowed. Other actions by this provider reported at *MCLU Vol. 97, 100, 102, 113, 128, 129, 165, 166, 167, 188, 203, 207, 217*.

Removed action in which hospital seeks benefits and alleges underpayment of \$1,983,814. Plaintiff alleges breach of contract, breach of third-party beneficiary contract, unjust enrichment, quantum meruit, and account stated.

Member seeks ERISA benefits associated with treatment of child's emergency plastic surgery. Plaintiff claims that though the EOB alleges payment was made directly to the member, the member never received payment.

Removed action in which public hospital seeks benefits and alleges underpayment of claims incurred during a non-par period involving emergency care. The claims involve "[] HMO Plan members" and "[] Chapter 627 Plan members."

Removed action in which OON plastic surgeon seeks ERISA benefits and alleges underpayment associated with bilateral breast reduction. Billed charges were \$150,000 but nothing was paid by the plan.

Member seeks ERISA benefits associated with residential treatment at Diamond Ranch Academy. The claim was denied on the grounds the facility did not meet the plan's definition of Residential Treatment Center.

Removed action in which member seeks ERISA benefits from a self-insured plan associated with residential treatment at ViewPoint Center. The claim was denied as OON. Plaintiff asserts a violation of MHPAEA on the grounds of an insufficient network.

Member seeks ERISA benefits from a self-insured plan associated with residential treatment at Heritage School Residential Treatment Center and Change Academy Lake of the Ozarks. The Heritage claim was denied as not medically necessary and the CALO claim was denied as OON.

Removed action in which OON provider group seeks \$135,768 in benefits and alleges underpayment of unspecified claims. Other actions by this provider reported at *MCLU Vol. 157, 168, 217*.

Self-funded plan seeks claims data from TPA and alleges the TPA has frustrated plaintiff's attempts to access and analyze the information. Plaintiff asserts the TPA has a fiduciary duty to provide the information.

ADDITIONAL NEWSWORTHY (REGULATORY)

CMS issues final rule outlining its audit methodology as applied to the Medicare Advantage Risk Adjustment Validation program, announcing its plans to use extrapolation beginning for PY 2018 audits and reaffirming its determination that a diagnosis code that is not properly documented in the patient's medical record is not a valid basis for risk adjustment payments to an MAO. Medicare and Medicaid Programs; Policy and Technical Changes to the Medicare Advantage, Medicare Prescription Drug Benefit, Program of All-Inclusive Care for the Elderly (PACE), Medicaid Fee-For-Service, and Medicaid Managed Care Programs for Years 2020 and 2021, 88 Fed. Reg. 6643-01, (published Feb. 1, 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.

Access requires an upgrade to a [Premium Subscription](#).

MANAGED CARE LITIGATION UPDATE®
Search Case Results
Contact
Admin
Hello jherman@herman-lawfirm.com
Log off

Search

Payer

Plaintiff Name

Date Range

District Court

Court of Appeal

MCLU Vol#

Case Name and Docket No.

Case Description

Judge

Show 10 entries

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.

H **Herman Law Firm**
TEXAS • LOUISIANA • MISSISSIPPI • MASSACHUSETTS • CALIFORNIA*
*Practicing as Jonathan M. Herman P.C., a California Professional Corporation

Managed Care Litigation Update is a registered trademark of Jonathan M. Herman, LLC