

Managed Care Litigation Update®

NEWSWORTHY

Fifth Circuit reverses district court and dismisses claims of emergency care providers who assert a cause of action for violation of Texas emergency care statutes, following response to certified question from Texas Supreme Court. *ACS Primary Care Physicians Southwest, P.A., USAC 5th Cir., No. 21-20168, 2023 WL 2034543, (Doc. 102, filed Feb. 16, 2023)*. Previously reported at *MCLU Vol. 150*.

District court dismisses underpayment claims of provider on grounds of plan's anti-assignment provisions under FRCP 12(b)(6). *Advanced Physical Medicine of Yorkville, Ltd. V. Allied Benefit Systems, Inc., et al., USDC ND IL, No. 22-cv-2969, 2023 WL 2058315, (Doc. 25, filed Feb. 16, 2023)*.

District court grants, in part, motion to dismiss claims of provider that ERISA plan's payments were below the amounts agreed to in a repricing agreement, dismissing the claims without prejudice to clarify how the contractual claims are separate and distinct from the ERISA plan. *Surgery Center of Viera, LLC v. UnitedHealthcare Insurance Company, USDC MD FL, No. 6:22-cv-793-PGB-DAB, 2023 WL 2078554, (Doc. 31, filed Feb. 17, 2023)*. Previously reported at *MCLU Vol. 199*.

District court denies motion to dismiss of ASA defendants who asserted 4-year statute of limitations in defense of antitrust claims involving allegation that ASAs used geographically defined areas to restrict competition and drive-up costs to self-insured plans. *Alaska Air Group, Inc., et al. v. Anthem, et al., USDC ND AL, No. 2:22-cv-558-RDP, (Doc. 190, filed Feb. 21, 2023)*.

RECENTLY FILED ACTIONS

Removed action in which physician group seeks \$1,132,058 in benefits associated with claims from 2019 through 2021. Other actions by this provider reported at *MCLU Vol. 157, 168, 217, 218*.

Testing center alleges \$670,000 underpayment of claims associated with COVID testing and asserts violations of CARES Act and FFCRA. Plaintiff asserts it used high-quality equipment such as the BioFire Film Array to provide more accurate results.

Member seeks ERISA benefits associated with residential treatment at Visions Residential Treatment Center and Elevations Residential Treatment Center and alleges violations of California and federal Mental Health Parity Acts. The grounds for the denials are not stated in the complaint.

Member seeks ERISA benefits associated with request for a shower chair and stander. The request for PA was denied on the grounds the services were excluded.

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RECENTLY FILED ACTIONS

Removed action in which plastic surgeon alleges underpayment associated with bilateral breast reduction where provider alleges plan promised to pay 150% of Medicare rate. Billed charges were \$150,000 for each of the providers, and \$347.77 and \$94.90, respectively, were paid. Other actions by this provider reported at *MCLU Vol. 187, 188, 192, 194, 203, 204, 206, 207, 208, 209, 212-217*.

Removed action in which plastic surgeon alleges underpayment associated with bilateral breast reduction. Billed charges were \$45,000 for each of the providers, and \$2,234.10 and \$2,891.57, respectively, were paid. Other actions by this provider reported at *MCLU Vol. 187, 188, 192, 194, 203, 204, 206, 207, 208, 209, 212-217*.

Member seeks \$8,444 in ERISA benefits from self-funded plan associated with unspecified treatment from August 18, 2020 through August 20, 2020. The grounds for denial or partial payment are not specified in the complaint.

Adversary proceeding in which bankrupt estate of therapist seeks recovery of alleged receivables.

Removed action in which member challenges FEHBA subrogation lien following confidential settlement of injury claim.

Removed action in which plan alleges anticompetitive conduct with respect to marketing of anti-psychotic drug Seroquel XR.

Member seeks over \$250,000 in ERISA benefits from fully-insured plan associated with residential treatment at Fulshear Treatment to Transition and alleges violations of MHPAEA. The claim was denied as not medically necessary based on the LOCAT guidelines.

Removed action in which OON surgeon and alleged assignee seeks ERISA benefits and asserts underpayment of claim for "abdominal wall reconstruction with left rectus myofascial flap and right rectus myofascial flap." Billed charges were \$97,000 and plaintiff asserts reimbursement was denied in its entirety.

Putative class action in which member alleges fraudulent "scheme to artificially inflate medical costs causing consumers to pay more than they should have paid." Plaintiff alleges that the plan paid more for lab work than the cash price and that plaintiff was balance billed an additional amount.

OON plastic surgeon seeks ERISA benefits and alleges underpayment associated with treatment of newborn with congenital ear deformities. Plaintiff asserts it received an "in-network/gap exception." Billed charges were \$19,800, and though full payment was initially made, the entire amount was later recouped.

OON physicians seek benefits and allege underpayment associated with unspecified treatment. Billed charges were \$175,000 and the amount paid was \$0.

Removed action in which OON plastic surgeon seeks benefits and alleges underpayment of claim for bilateral breast reduction. Billed charges were \$85,134 for an assistant surgeon and \$5,366.60 was paid.

Member seeks benefits associated with chronic back pain where plaintiff requested authorization for second spinal cord stimulator on the grounds plaintiff had failed back syndrome. Plaintiff asserts the request was denied in part because the stimulator would not completely resolve the chronic pain.

Home infusion therapy provider seeks ERISA benefits associated primarily with claims for pain pump therapy. Plaintiff asserts its per diem billing is appropriate.

Provider of residential mental and behavioral health treatment services and alleged assignee seeks ERISA benefits associated of claims of two patients. Total billed charges are \$59,188.58 and nothing has been paid. The claims were denied for lack of prior authorization.

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	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

ADDITIONAL NEWSWORTHY (REGULATORY)

Utah Department of Insurance adopts regulation encouraging and regulating use of electronic data sharing in response to prior authorization requests. Electronic Data Interchange Transactions, Utah Bull. DAR File No. 55164.

[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.

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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