

Managed Care Litigation Update®

NEWSWORTHY

Fifth Circuit affirms dismissal of claims associated with proton beam therapy against Office of Personnel Management, finding FEHBA preemption. *Gonzalez v. Blue Cross Blue Shield Assoc.*, USAC 5th Cir., No. 22-10062, 2023 WL 2473296 (Doc. 65, filed Mar. 13, 2023). Previously reported at *MCLU Vol. 158*.

District court grants plan's motion to dismiss claims of OON provider seeking reimbursement for Covid testing, finding there is no private right of action under the CARES Act, the Families First Coronavirus Response Act, or the ACA section 300gg-19a. *Murphy Medical Associates, LLC v. Centene Corp.*, USDC D Conn., No. 3:22-CV-504-VLB, 2023 WL 2384143 (Doc. 47, filed Mar. 6, 2023).

District court dismisses without prejudice OON provider's state law claims related to health plan after finding ERISA complete preemption. *Park Avenue Podiatric v. Cigna Health & Life Ins. Co.*, USDC SD NY, No. 1:22-cv-10312-AKH, 2023 WL 2478642, (Doc. 19, filed Mar. 13, 2023). Previously reported at *MCLU Vol. 214*.

District court grants plan's motion to dismiss patient's claim for coverage of wilderness therapy, finding patient failed to state a claim under the Mental Health Parity and Addiction Equity Act. *L.L., individually and on behalf of J.L., a minor, v. Anthem Blue Cross Life & Health Ins., DLA Welfare Benefit Plan*, USDC D UT, No. 2:22-cv-208-DAK, 2023 WL 2480053 (Doc. 34, filed Mar. 13, 2023). Previously reported at *MCLU Vol. 197*.

RECENTLY FILED ACTIONS

Pro se clinical neurologist asserts civil rights violations in response to FWA investigation involving suspected kickbacks associated with intravenous gamma globulin (IVIG).

Member challenges \$81,194.45 ERISA subrogation lien and asserts Michigan No-Fault Act to shield recovery from the benefits paid by the automobile liability policy, which is asserting that it will coordinate benefits.

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RECENTLY FILED ACTIONS

Member seeks ERISA benefits from self-funded plan associated with air ambulance transportation from Lakewood Medical Ranch Medical Center to Johns Hopkins All Children's Hospital to treat Diabetic Ketoacidosis. The claim was denied as not medically necessary.

OON plastic surgeon seeks ERISA benefits associated with surgery on baby to treat congenital ear deformities. Billed charges were \$39,600 and the amount paid was \$7,962.99. Other claims by this provider reported at *MCLU Vols. 95, 130, 139, 147, 151, 162, 166, 180, 187, 195, 196, 217, 219*.

Ambulatory surgery center and member seek ERISA benefits associated with services claimed to have been pre-approved but were later denied. Billed charges were \$147,070. The EOB asserts that the claim was denied as out of network.

Group of OON air ambulance providers seek over \$1 million in allegedly unpaid awards issued under the No Surprises Act regime.

Group of OON air ambulance providers allege nonpayment of over \$2,000,000 in awards under the No Surprises Act arbitration regime.

Member seeks ERISA benefits associated with residential treatment at Elevations Residential Treatment Center and alleges violations of MHPAEA. The claim was denied as not medically necessary.

OON surgical center and alleged assignee seeks ERISA benefits and alleges underpayment associated with surgery treatment provided to seven members. Billed charges and the amount paid are not disclosed in the public complaint.

Member seeks ERISA benefits from self-funded plan associated with residential treatment at Uinta Academy and asserts violations of MHPAEA. The claim was denied on the grounds the facility does not adhere to guidelines such as LOCUS and CASII.

Removed action in which pro se member filed small claims case arising out of claim that "I was sent to wrong doctor" and that his ERISA policy was nonresponsive.

Member seeks ERISA benefits associated with residential treatment at Confluence Behavioral Health and Innercept LLC and alleges violations of MHPAEA. The Confluence claim was denied on the grounds the facility does not have a Medical Director and that patients are not seen by a psychiatrist on a weekly basis. The Innercept claim was denied on the grounds it is not accredited.

Removed action in which OON physician group seeks \$250,837. The underlying summons identifies causes of action for 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, 217, 218, 219*.

OON oculoplastic surgeon and alleged assignee seeks ERISA benefits and alleges underpayment associated with infusion therapy to treat thyroid eye disease. Total billed charges over 8 Tepezza treatments were \$1,192,000 and the total amount paid was \$160,562.40.

Member seeks ERISA benefits associated with residential treatment at Maple Lake Academy and alleges violations of MHPAEA. The claim was denied on the grounds the facility was not properly accredited.

Removed action in which member challenges \$218,954.87 FEHBA liens associated with medical malpractice action following settlement of claims.

OON surgical center and alleged assignee seeks ERISA benefits and alleges underpayment of 16 claims involving mostly colonoscopies and EGDs.

Member seeks ERISA benefits self-insured plan and alleges wrongful denial associated with breast explant surgery. The claim was denied as not medically necessary.

Removed action in which OON physician group seeks \$115,220. The underlying summons identifies causes of action for 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, 217, 218, 219*.

Member seeks benefits associated with residential treatment at Evoke at Entrada. The claim was denied on for lack of prior authorization.

Removed action in which OON emergency services provider seeks \$273,942.84 in benefits and alleges violation of Florida state law in determining the reimbursement amount.

OON plastic surgeon seeks ERISA benefits and alleges underpayment associated with bilateral mastectomies, specifically a DIEP Flap. Total billed charges were \$234,042 and the amount paid was \$10,082.38.

Removed action in which dual licensed OON chiropractor and acupuncturist and assignee seeks ERISA benefits in excess of \$250,000 arising from what plaintiff describes as the administrator's inability to add his dual certification to their payment system.

Member, acting through his physician by a power of attorney, seeks ERISA benefits and asserts underpayment associated with emergency brain surgery. Billed charges were \$143,131.98 and the amount paid was \$2,119.05.

Removed action in which group of OON emergency physician practices seek benefits and allege underpayment of over 2,000 claims. Plaintiff asserts claims for violation of Georgia emergency care statutes, quantum meruit, and unjust enrichment, among other state law claims.

Member seeks ERISA benefits associated with residential treatment at Solacium Sunrise and challenges use of MCG level of care guidelines as a violation of the California Mental Health Parity Act. Twenty-four days of treatment were approved but treatment was denied thereafter as not medically necessary.

OON plastic surgeons seek benefits and allege underpayment associated with bilateral breast reconstruction with DIEP Flap following bilateral mastectomies. Billed charges were \$111,397.36 and the amount paid was \$4,824.68.

ADDITIONAL NEWSWORTHY (REGULATORY)

Texas HHSC adopts regulations implementing provision of applied behavior analysis (ABA) services for Medicaid members with autism at 1 TAC 354.5001 et al. 48 Tex. Reg. 1281, (adopted Mar. 3, 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	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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