

Managed Care Litigation Update®

NEWSWORTHY

District court dismisses OON provider's ERISA claim for alleged under reimbursement of chiropractic health benefits, finding the provider lacked standing to bring an ERISA claim on behalf of the patient due to the plan's anti-assignment provision, notwithstanding assignment of benefits and a designation of authorized representative. *Advanced Physical Medicine of Yorkville, LTD. v. Cigna Health and Life Ins. Co., et al.*, USDC N.D. IL, No. 1:22-cv-2991, 2023 WL 2631725 (Doc. 37, filed Mar. 24, 2023). Previously reported at *MCLU Vol. 202*.

District court dismisses claims of proposed class of members seeking coverage for hearing loss treatment, finding that patients' claims under the ACA § 1557, and state law, failed as the patients failed to allege plan provisions that were discriminatory based on an alleged disability. *E.S., et al. v. Regence Blueshield, et al.*, USDC WD WA, No. 2:17-cv-1609-RAJ (Doc. 53, filed Mar. 16, 2023).

District court grants union health fund's motion to dismiss claims of OON provider seeking reimbursement for COVID testing, finding that provider's claim under ERISA failed due to anti-assignment clause in the plans. *Murphy Medical Associates, LLC v. 1199SEIU National Benefit Fund*, USDC D CT., No. 3:22-CV-64-KAD, 2023 WL 2631811 (Doc. 48, filed Mar. 24, 2023).

District court grants MSJ on patient's claims seeking coverage of residential mental health treatment, finding the plan's medical necessity determinations were neither arbitrary nor capricious and the plan's mental health limitations were not more restrictive than limitations placed on medical surgical benefits. *M.Z. and N.H. v. [BCBS IL], et al.*, USDC D. Utah, No. 1:20-cv-184-RJS-CMR, 2023 WL 2634240 (Doc. 70, filed Mar. 24, 2023). Previously reported at *MCLU Vol. 167*.

RECENTLY FILED ACTIONS

Member seeks ERISA benefits associated with "top" surgery. Plaintiff's request for prior authorization was denied as not covered because of the age of the beneficiary.

Member seeks ERISA benefits from fully-insured plan associated with residential treatment at Evoke at Cascades and Equinox and the transportation to Evoke from another facility. Plaintiff alleges violations of MHPAEA. The claim for transportation was denied on the grounds non-emergency transportation is not considered medically necessary, and the Evoke claim was denied on the grounds of a wilderness program exclusion. The Equinox claim was denied on the grounds it did not meet the plan's criteria of a residential treatment center.

Removed action in which member seeks benefits associated with orthopedic surgery. The claim was denied as not medically necessary and provider is balance billing member.

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RECENTLY FILED ACTIONS

Pro se member alleges wrongful denial of prescription for “tretinoin cream.” Plaintiff alleges the claim was denied due to her age.

Removed action in which member seeks \$45,000 in ERISA benefits and alleges underpayment and wrongful denial of claims for which plaintiff is responsible. Plaintiff asserts the basis for denial was never provided.

Removed action in which member seeks \$56,046 in ERISA benefits and alleges underpayment and wrongful denial of claims for which plaintiff is responsible. Plaintiff asserts the basis for denial was never provided.

Removed action in which member seeks \$87,592 in ERISA benefits and alleges underpayment and wrongful denial of claims for which plaintiff is responsible. Plaintiff asserts the basis for denial was never provided.

Removed action in which member seeks \$75,000 in ERISA benefits and alleges underpayment and wrongful denial of claims for which plaintiff is responsible. Plaintiff asserts the basis for denial was never provided.

Removed action in which member seeks \$90,000 in ERISA benefits and alleges underpayment and wrongful denial of claims for which plaintiff is responsible. Plaintiff asserts the basis for denial was never provided.

Removed action in which the Government of Puerto Rico alleges sprawling scheme of overcharges for insulin and asserts PBM and insulin manufacturers as being responsible.

Member seeks ERISA benefits from fully-insured plan associated with residential treatment at Eva Carlston Academy and alleges violations of MHPAEA. The claim was partially paid and partially denied for lack of preauthorization and incomplete information.

Member seeks over \$160,000 in ERISA benefits from self-funded plan associated with residential treatment at Open Sky Wilderness Therapy and Waypoint Academy and alleges violations of MHPAEA. The Open Sky claim was denied pursuant to a wilderness therapy exclusion and the Waypoint claim was denied on the grounds residential treatment is excluded.

Removed action in which OON ambulatory surgery center seeks over \$900,000 in benefits and alleges underpayment associated with treatment of 4 patients. Plaintiff asserts claims for breach of oral contract and promissory estoppel.

Removed action in which pro se member alleges “excess and unauthorized charges for health insurance.”

Removed action in which OON plastic surgeon seeks ERISA benefits and alleges underpayment of claim for bilateral breast reduction. Billed charges were \$96,000 and the amount paid was \$2,132.54.

Removed action in which OON plastic surgeon and alleged assignee seeks ERISA benefits associated with treatment of lip laceration. Billed charges were \$35,903 and the amount paid was \$650.83.

Member challenges assertion of ERISA subrogation lien in the amount of \$9,856.19 following personal injury settlement of \$75,000. Plaintiff asserts the common fund doctrine should be applied to reduce the lien pursuant to Indiana state law, but the plan asserted that ERISA preempts that state law with respect to a self-funded plan.

OON chiropractor and alleged assignee seeks \$62,691 in ERISA benefits associated with allegedly denied or underpaid claims involving Nerve Conduction Studies performed on 6 members.

OON chiropractor and alleged assignee seeks \$6,798.16 in ERISA benefits associated with allegedly denied or underpaid claims involving Nerve Conduction Studies performed on 2 members.

Network compounding pharmacy seeks benefits and alleges underpayment and wrongful denials associated with home infused therapy and challenges recoupment effort. Plaintiff asserts more than \$643,000 in unpaid claims and defendant asserts recoupment of \$251,630.05.

Removed action in which OON hospital and alleged assignee seeks benefits and alleges underpayment of 258 emergency claims involving billed charges of \$3,449,992.11. Plaintiff alleges state law claims including prompt pay violations.

Removed action in which network hospital claims violation of provider agreement and seeks \$403,928.41 in ERISA benefits associated with treatment of member. Plaintiff asserts it was told the claims could not be paid because the patient failed to provide updated information to the plan.

PBM seeks to compel arbitration of disputed reimbursement amounts with network pharmacy pursuant to provision contained in the provider manual. Pharmacy had previously filed underpayment claims in state court.

Member seeks benefits from marketplace policy pertaining to residential treatment at Fulshear Academy and alleges violations of MHPAEA. The claim was denied on the grounds of an exclusion.

Removed action in which OON hospital seeks benefits and alleges underpayment of thousands of claims for emergency services. Plaintiff asserts state law claims for unjust enrichment, quantum meruit, breach of implied contract, and promissory estoppel.

OON plastic surgeon seeks ERISA benefits and alleges underpayment associated with sliced finger. Billed charges were \$9,060 and the amount paid was \$1,975.73 with an additional \$555.15 applied to coinsurance. Other actions filed by this provider reported in *MCLU Vol. 82, 95, 147, 178, 179, 180, 200*.

Removed action in which OON plastic surgeon seeks \$106,405.24 in ERISA benefits associated with pre-approved breast implants. The primary surgeon's billed charges were \$92,000 and the charges of the assistant were \$23,000, and total payments were \$8,594.76. Other actions by this provider reported at *MCLU Vols. 148, 193*.

Hospital alleges underpayment of claims and breach of letter of agreement. Billed charges were \$339,044.38 and plaintiff alleges a balance of \$77,618.71, along with late payments.

PBM seeks to compel arbitration of reimbursement dispute with pharmacy pursuant to arbitration provision in contract (plus 35 others).

Putative class action in which member challenges categorical denial of coverage for outdoor youth programs pursuant to wilderness therapy exclusion. Plaintiff asserts the exclusion violates the ERISA plan documents and MHPAEA.

Removed action in which member seeks over \$270,000 in benefits from a short-term policy that was allegedly rescinded for material misrepresentations.

Envision Healthcare moves to confirm arbitration award of \$91,270,257 based on alleged breaches of a Medical Group Participation Agreement.

ADDITIONAL NEWSWORTHY (REGULATORY)

South Dakota legislature passes act permitting a third-party payor to request and receive the amount of all rebate revenues and associated revenues received by a PBM with whom the payor has a contract, amending SD ST § 58-29E-1, et al. 2023 SD Laws HB 1135 (approved Mar. 23, 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.

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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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