

# Managed Care Litigation Update™

## NEWSWORTHY

Fifth Circuit affirms in part, and reverses in part, summary judgment granted in favor of ERISA plans, affirming dismissal of claims where a written assignment of benefits in evidence was lacking but finding the remaining issues required a more extensive evidentiary record, such as the dismissals for failure to exhaust administrative remedies and dismissals on whether plans should be estopped from asserting anti-assignment clauses. *Angelina Emergency Medicine Associates PA, et al. v. Blue Cross and Blue Shield of Alabama, et al.*, USAC 5 Cir., No. 24-10306, — F.4th —, 2025 WL 2268126, (Doc. 112, filed Aug. 8, 2025). Previously reported at *MCLU Vol. 99*. **DISCLOSURE – I am counsel of record in this case.**

District court dismisses counterclaims of plastic surgery practice, finding that (1) the WHCRA does not provide a private right of action and (2) the NSA does not provide a private right of action. *East Coast Advanced Plastic Surgery, LLC, et al. v. Cigna Health and Life Insurance Company, et al.*, USDC SD NY, Nos. 1:2025-cv-255, 1:25-cv-1686, 2025 WL 2371537, (Docs. 49 and 58, respectively, filed Aug. 14, 2025). Previously reported at *MCLU Vol. 264*.

District court reaffirms decision finding health plans in violation of Section 1557 of the ACA due to medical policies that deny coverage for certain gender affirming care to minors, finding that the *Skrymetti* decision did not change the result but instead supported the decision. *L.B., et al. v. Premera Blue Cross*, USDC WD WA, No. 2:23-cv-953-TSZ, — F.Supp.3d —, 2025 WL 2326966, (Doc. 185, filed Aug. 12, 2025). Previously reported at *MCLU Vol. 227*.

## RECENTLY FILED ACTIONS

OON neurosurgeon seeks to collect NSA award associated with CPT 22612. Billed charges were \$93,000.02, Defendant allowed \$2,052.89, and the award was \$79,000.

OON pain management surgeon seeks to collect NSA award associated with two units of CPT 22527. Total billed charges were \$123,326. Claim was denied. Total award was \$89,380.

Member seeks ERISA benefits associated with residential treatment at Galen Hope and alleges failure to provide coverage, full and fair review of claim denials, and production of requested documents. Claim was denied as not medically necessary.

OON orthopedic surgeon seeks to collect NSA awards related to treatment of two members, For Member One, CPT 14301 and 14302 were billed for a total of \$61,151, the allowed amount was \$85.41 in total, and the aggregate award was \$63,151. For Member Two, CPT 14302 was billed at \$15,168, the allowed amount was \$285.19, and the award was \$15,168.

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## RECENTLY FILED ACTIONS

OON neuromonitoring treatment provider seeks to collect NSA awards related to treatment of seven members. For Member One, CPT codes 95941, 95938, 95939 and 95861 were billed for a total of \$47,475, the allowed amount was \$1,029.21 in total, and the aggregate award was \$ 47,364. For Member Two, CPT 95885 and 95941 were billed for a total of \$17,300, the allowed amount was \$632.95 in total, and the aggregate award was \$17,300. For Member Three, CPT 95861, 95929, 95938, 95939 and 95941 were billed for a total of \$44,775, the allowed amount was \$932.83 in total, and the aggregate award was \$39,284.60. For Member Four, CPT 95941, 95938, 95939 and 95861 were billed for a total of \$38,475, the claim was denied, and the aggregate award was \$ 37,476. For Member Five, CPT 95941, 95938, 95939 and 95861 were billed for a total of \$38,475, the allowed amount was \$674.91 in total, and the aggregate award was \$37,476. For Member Six, CPT 95941, 95938, 95939 and 95861 were billed for a total of \$33,975, the claim was denied, and the aggregate award was \$33,864. For Member Seven, CPT 95941, 95938, 95939 and 95861 were billed for a total of \$51,975, the allowed amount was \$1,215.90 in total, and the aggregate award was \$51,864.

OON neuromonitoring services provider seeks to collect NSA awards related to treatment of four members. For Member One, CPT 95938, 95937, 95861 and seven units of 95940 were billed for a total of \$19,900, the allowed amount was \$815.11 in total, and the aggregate award was \$18,560. For Member Two, CPT 95938, 95861, 95937 and eighteen units of 95940 were billed for a total of \$21,400, the allowed amount was \$1,080.12 in total, and the aggregate award was \$21,400. For Member Three, CPT 95939, 95938, 95861, 95937 and ten units of 95940 were billed for a total of \$32,400, the allowed amount was \$1,411 in total, and the aggregate award was \$9,594.90. For Member Four, CPT 95939, 95938, 95861, 95937 and eight units of 95940 were billed for a total of \$31,400, the allowed amount was \$906.78 in total, and the aggregate award was \$6,166.09.

OON vascular care provider seeks to collect NSA award associated with CPT 37617. Billed charges were \$10,000. Claim was denied. Award was \$10,000.

Hospital group asserts unlawful horizontal agreements and other anticompetitive conduct in violation of the Sherman Act, Cartwright Act and the state antitrust laws.

OON orthopedic surgeon seeks to collect NSA awards associated with CPT 22558, 22853 and 22585 with billed charges of \$82,500, \$40,000 and \$18,500, respectively. The allowed amount for CPT 22585 was \$248 and the other two claims were denied. Total award was \$217,000.

OON pediatric surgeon seeks to recover NSA awards related to treatment of two members. For Member One, CPT 21743 was billed at \$63,750, Defendant allowed \$368.97, and the award was \$63,750. For Member Two, CPT 21743 was billed at \$178,000, the claim was denied, and the award was \$170,000.

OON pediatric surgeon seeks to recover NSA awards related to treatment of three members. For Member One, CPT 44970 was billed at \$21,650, Defendant allowed \$682.38, and the award was \$21,650. For Member Two, CPT 47562 was billed at \$32,760, the amount allowed was \$635.47, and the award was \$32,760. For Member Three, CPT 64488 was billed at \$5,260, the claim was denied, and the award was \$5,260.

OON anesthesiologist seeks to collect NSA awards associated with CPT 99156 and 99157. Total billed charges were \$6,050, the claims were denied, and the total award was \$6,050.

OON general surgeon seeks to recover NSA award associated with CPT 47562. Billed charges were \$55,902. Defendant allowed \$1,005.30. The award was \$36,944.70.

OON plastic surgeon seeks to collect NSA awards associated with CPT 14301 and 15777. Total billed charges were \$29,800, the claim was denied, and the total award was \$29,800.

OON brain and spinal surgeon seeks to collect NSA award associated with CPT 22551. Billed charges were \$66,000, Defendant allowed \$508.37, and the award was \$59,000.

OON orthopedic provider seeks to collect NSA awards associated with CPT 29828-RT, 29822-59-RT, 29822-59-80-RT, 29828-80-RT, 29827-80-RT, 29824-80-RT, and 29826-80-RT. Total billed charges were \$140,276. Defendant allowed \$310.95 in total. Aggregate award amount was \$138,486.

OON neurophysiological neuromonitoring provider seeks to collect NSA awards related to treatment of five members. For Member One, CPT 95861, 95939, 95938 and thirteen units of 95940 were billed for a total of \$44,412, Defendant allowed \$1,385.68 in total, and the aggregate award was \$40,875. For Member Two, CPT 95831, 95861, 95938 and twenty units of 95940 were billed for a total of \$39,537, the allowed amount was \$921.58 in total, and the aggregate award was \$34,769. For Member Three, CPT 95939, 95938, and twenty-four units of 95940 were billed for a total of \$51,175, the allowed amount was \$1,781.43 in total, and the aggregate award was \$45,895. For Member Four, CPT 95861, 95939, 95938 and twelve units of 95940 were billed for a total of \$43,312, the allowed amount was \$1,428.62 in total, and the aggregate award was \$40,035. For Member Five, CPT 95861, 95909, 95938, two units of 95885, and eleven units of 95940 were billed for a total of \$26,200, the allowed amount was \$902.42 in total, and the aggregate award was \$14,163.54.

OON orthopedic provider seeks to collect NSA awards related to treatment of three members. For Member One, CPT 29807-80-RT was billed at \$23,460, Defendant allowed \$332.23, and the award was \$23,460. For Member Two, CPT 29828-RT was billed at \$22,718, the claim was denied, and the award was \$22,718. For Member Three, CPT 29881-RT was billed at \$18,250, the amount allowed was \$1,241.32, and the award was \$18,250.

OON nurse seeks to collect NSA awards associated with CPT 29826 and 29823. Total billed charges were \$38,736, Defendant allowed \$889.91 in total, and the aggregate award was \$38,736.

OON plastic surgery provider seeks to collect NSA award associated with CPT 19020. Billed charges were \$8,850, the claim was denied, and the award was \$8,850.

Provider of ABA therapy and other autism treatment asserts wrongful denial of claims and underpayment by Medicaid Managed Care Organization. Plaintiff alleges improper and retaliatory termination of network contract following assertion of underpayment of claims.

Hospital system asserts anticompetitive activities in violation of the Sherman Act. Plaintiffs allege wrongful use of MultiPlan common pricing agreements to suppress allowed amounts for OON services by third party payors.

OON orthopedic surgeon seeks to collect NSA awards related to treatment of five members whose claims were denied. For Member One, the award on CPT 29821 was the billed charges of \$18,571. For Member Two, the award on CPT 29823 was billed charges of \$19,575. For Member Three, billed charges for CPT 29880 were \$20,077 and the award was \$19,000. For Member Four, CPT codes 27347 and 27403 were billed at \$24,367, and the total award amount was \$24,187.96. For Member Five, the award on CPT 29823 was the billed charges of \$19,575.

OON spine and pain specialist seeks to recover NSA awards related to treatment of six members. For Member One, CPT 22214-58 was billed at \$108,000, the claim was denied, and the award was \$43,750. For Member Two, CPT codes 22551-62, 22552-6 (two units) and 22853-80 (three units) were billed at \$302,700, the claim was denied, and the total award was \$250,000. For Member Three, two units of CPT 22853 were billed at a total of \$86,000, the claim was denied, and the award was \$86,000. For Member Four, three units of CPT 22853-80 were billed at \$129,000, the allowed amount was \$94.57, and the award was \$129,000. For Member Five, CPT 63030-RT-62 was billed at \$80,000, the allowed amount was \$6,168.88, and the award was \$72,000. For Member Six, CPT 22558-58-80 was billed at \$87,600, the allowed amount was \$491.71, and the award was \$70,000.

OON provider of intraoperative neuromonitoring seeks to collect NSA awards related to treatment of five members and involving denied claims. The award on CPT codes 95940 (nineteen units), 95938, 95939 and 95861 was \$46,684. The award on two units of CPT 95885 was \$3,040. The award on CPT codes 95940 (twelve units), 95939, 95938, 95865 and 95864 was \$30,088.00. The award on CPT codes 95940 (thirteen units), 95938, 95886 and 95909 were billed at \$29,000 was \$ 26,140. The award on CPT codes 95940 (six units), 95938 and 95866 was \$13,876.

OON pain specialist seeks to collect NSA award associated with CPT 63650. Billed charges were \$35,000, the allowed amount was \$5,600, and the award was \$15,000.

OON plastic surgeon seeks to collect NSA award associated with CPT codes 14301-82 and 14302-82. Billed charges were \$7,500 and \$2,500 respectively, claims were denied, and the awards were the amounts billed.

Removed action in which OON behavioral health services provider alleges wrongful denial of thousands of claims and asserts claims of negligent misrepresentation, unjust enrichment, quantum meruit and violation of Oklahoma's Clean Claim Reimbursement Law. Plaintiff additionally asserts violations of letters of agreement.

OON neurology and epilepsy treatment provider seeks to recover NSA award associated with two units of CPT 95720. Billed charges were \$6,000, the allowed amount was \$426.68, and the award was \$6,000.

OON orthopedic treatment provider seeks to collect NSA awards related to treatment of three members. For Member One, CPT codes 29880-LT and 29888-LT were billed at \$55,715, only CPT 29888-LT was allowed at \$8,875, and the aggregate award was \$53,078. For Member Two, CPT codes 29888-LT and 29881-LT were billed at \$54,253, the allowed amount was \$2,555.85, and the award was \$49,209.25. For Member Three, CPT 27814-RT was billed at \$33,206, claim was allowed at \$4,409, and the award was \$33,206.

OON spine and musculoskeletal specialist seeks to collect NSA award associated with CPT 22612-51. Billed charges were \$95,000, the allowed amount was \$2,176.14, and the award was \$86,971.

OON neurosurgeon seeks to collect NSA award associated with CPT 22612. Billed charges were \$116,250, the amount allowed was \$2,984.42, and the award was \$79,000.

OON interventional pain specialist seeks to collect NSA award associated with CPT 22845-80-59. Billed charges were \$45,000, the plan allowed \$152.80, and the award was \$42,000.

OON interventional pain specialist seeks to collect NSA award associated with CPT 63030-LT. Billed charges were \$80,000, the claim was denied, and the award was \$72,000.

OON plastic surgeon seeks to collect NSA award associated with CPT 13160. Billed charges were \$15,450, the allowed amount was \$1,619.48, and the award was \$10,578.

Member seeks ERISA benefits associated with residential treatment at Blue Ridge Therapeutic Wilderness and asserts violations of MHPAEA. The claim was denied for lack of prior authorization.

Removed action in which Member alleges wrongful denial of COBRA benefits on the erroneous grounds that coverage was not available on the date of service. Member asserts that although the plan now recognizes coverage was appropriate, it insists it is "too late" for the bill to be reimbursed.

Removed action in which OON emergency physician group asserts underpayment and alleges billed charges of \$207,500 are owed pursuant to Florida state law.

Insurer alleges systemic abuse of the NSA's IDR process involving false certifications and asserting knowingly ineligible claims. Plaintiff further asserts use of sham entity to appear as OON.

Member claims plan unlawfully asserted a right of subrogation for payments following settlement of personal injury action in violation of the health insurance policy.

OON provider of intraoperative neuromonitoring seeks to collect NSA award associated with CPT 95938. Billed charges were \$9,175, Defendant allowed \$66.33, and the award was \$9,175.

OON provider of intraoperative neuromonitoring seeks to collect NSA awards with an alleged outstanding balance of \$14,652.19.

OON plastic surgeon seeks to collect NSA awards related to treatment of three members. For Member One, CPT 38530-RT was billed at \$ 5,798.10, the amount allowed \$108.88, and the award was \$5,798.10. For Member Two, CPT codes 19370 and 15002-LT were billed at \$2,200 and \$3,015.20, respectively, Defendant allowed \$354.60 and \$227.54, and the awards were billed charges. For Member Three, CPT 32900 was billed at \$8,291.80, the claim was denied, and the award was \$8,291.80.

OON provider of intraoperative neuromonitoring services seeks to collect NSA award with 7 determinations. The awards were \$5,300 for CPT 95938; \$900 for CPT 95927; \$700 for CPT 95868; \$320 for CPT 95860; \$400 for CPT 95937; \$650 for CPT 95870; and \$3,000 for CPT 95940.

OON provider of intraoperative neuromonitoring services seeks to collect NSA awards related to treatment of two members. For Member One, CPT codes 95861, 95938 and 95839 were billed at \$29,475, Defendant allowed \$352.66 in total, and the aggregate award was \$27,833. For Member Two, CPT 95938 was billed at \$9,175, the allowed amount was \$48.49, and the award was \$9,175.

Member seeks \$71,500 in ERISA benefits associated with residential treatment at blueFire Wilderness Therapy and associated non-emergency transportation services. Plaintiff also asserts violations of MHPAEA. Basis of denial was a wilderness program exclusion.

Removed action in which insurer asserts drug manufacturer engaged in anticompetitive conduct by unlawfully extending patent protection for the drug Enbrel, thereby blocking biosimilar competition and causing inflated prices.

OON plastic surgeon seeks to collect NSA awards related to treatment of two members. For Member One, CPT 13131 was billed at \$20,869.25, Defendant allowed \$249.87, and the award was \$18,995. For Member Two, CPT 19318 was billed at \$75,000, the allowed amount was \$33.24, and the award was \$75,000.

Member seeks over \$150,000 in ERISA benefits associated with residential treatment at Wingate Wilderness Therapy and Elevations RTC and asserts violations of MHPAEA. The Wingate claim was denied pursuant to an exclusion for wilderness programs, and the Elevations claim was denied as not medically necessary.

Substance Use Disorder treatment facility joins MDL asserting anticompetitive conduct associated with use of Multiplan pricing tool.



OON provider of intraoperative monitoring services seeks to collect NSA award of \$7,000 for CPT code 95938.

OON podiatrist seeks to collect NSA awards associated with CPT 27650-LT-80 and 29515-LT-59-80. Billed charges were \$10,347 and \$450, respectively, both claims were denied, and award amounts were \$7,760.25 and \$337.50, respectively.

OON pain management specialist seeks to collect NSA award associated with CPT 22633. Billed charges were \$90,500, the claim was denied, and the award was \$90,000.02.

OON pain management specialist seeks to collect NSA awards related to treatment of two members. For Member One, CPT 63047 was billed at \$85,000, the allowed amount was \$584.48, and the award was \$63,750. For Member Two, CPT codes 63048, 63047-AS and 63048-AS were billed at \$139,000, the amounts allowed were \$13,480.51, and the aggregate award was \$137,000.

OON plastic surgeon seeks to collect NSA award associated with CPT 64450. Billed charges were \$5,000, the amount paid was \$93.32, and the award was \$5,000.

Removed action in which network mental health provider seeks declaratory judgment to prohibit continued denials of coverage. Plaintiff asserts it has provided all medical records requested yet the insurer intends to terminate the network contract for failure to provide records.

Removed action in which insurer asserts drug manufacturer engaged in anticompetitive conduct by unlawfully extending patent protection for the drug Enbrel, thereby blocking biosimilar competition and causing inflated prices.

OON orthopedic provider seeks to collect 5 NSA awards. The awards were \$43,000 for each of 2 units of CPT 22853, \$34,000 for CPT 22842, \$89,588 for CPT 22633, and \$72,000 for CPT 63030-59.

OON neurosurgeon seeks to collect 2 NSA awards. For CPT 36226, billed charges were \$28,582, the amount allowed was \$324.49. For CPT 36227, billed charges were \$21,741, the amount allowed was \$213.30. The aggregate award was \$37,742.25.

OON plastic surgeon seeks to collect 2 NSA awards. For CPT 19318, billed charges were \$78,000, the amount paid was \$1,920, and the award was \$75,000. For CPT 13131, billed charges were \$18,995, the amount paid was \$234.78, and the award was \$18,045.25.

OON pediatric orthopedic surgeon seeks to collect NSA award associated with CPT 23600. Billed charges were \$8,000, the amount allowed was \$383.33, and the award was \$2,606.64.

OON neurosurgeon seeks to collect NSA award associated with CPT 61783. Billed charges were \$17,400, the claim was denied, and the award was \$1,447.22.

Removed action in which OON air ambulance provider seeks to collect \$8,488.45 pursuant to an NSA IDR award. Billed charges were \$39,442, the amount paid was \$21,265.95, and the award was \$29,754.40.

Removed action in which OON air ambulance provider seeks to collect \$77,582.71 pursuant to 2 NSA IDR awards. Billed charges on the claims were \$46,104 and \$58,232, and the awards were \$38,889.42 and \$46,120.44, respectively.

OON spine surgeon seeks to collect 5 NSA awards. For CPT 22856, the award was \$95,002.02. For CPT 22858, the award was \$25,212.50. For CPT 63048, the award was \$27,000. For CPT 22853, the award was \$43,000. For CPT 22856, the award was \$60,162.

OON provider of intraoperative neuromonitoring services seeks to collect 10 NSA awards. The awards were \$20,100 for CPT 95941, \$5,400 for CPT 95939, \$5,100 for CPT 95938, \$1,800 for CPT 95927, \$1,600 for CPT 95870, \$600 for CPT 95867, \$300 for CPT 95860, \$4,700 for CPT 95829, \$1,000 for CPT 95813, and \$1,500 for CPT 95812.

## ADDITIONAL NEWSWORTHY (REGULATORY)

Texas Legislature adopts 180-day limitations period to request mediation under its mandatory mediation regime applicable to out-of-network disputed emergency facility claims. Tex. Ins. 1467.054(a), Tex. S.B. 2544 (eff. Sep. 1, 2025).

[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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