

# Managed Care Litigation Update®

## NEWSWORTHY

New Jersey district court grants motion to dismiss of insurer in suit to collect NSA award, finding that (1) the Federal Arbitration Act does not permit confirmation of NSA awards and (2) the No Surprises Act does not create a private right of action to enforce NSA awards. *Modern Orthopaedics of NJ v. Premera Blue Cross*, USDC D NJ, No. 2:25-cv-1087-BRM-JSA, 2025 WL 3063648, (Doc. 29, filed Nov. 3, 2025). Previously reported at *MCLU Vol. 266*.

Texas district court dismisses claims of implied contract and declaratory judgment seeking to bind defendants to a reimbursement at a usual and customary rate based on "determining the customary billed charge." *Paris Emergency Center, LLC, et al. v. Blue Cross and Blue Shield of Texas, et al.*, USDC ED TX, No. 5:24-cv-2-RWS, 2025 WL 3171163, (Doc. 104, filed Nov. 12, 2025). Previously reported at *MCLU Vol. 240*.

California appellate court affirms denial of request for new trial by OON clinical laboratories following verdict in favor of insurer finding fraud; fraudulent scheme involved the rerouting of claims through providers who did not provide the services in an attempt to avoid prepayment review of the lab that did perform the services. *Blue Cross of California, et al. v. Ali Kohzad, et al.*, D082886, 2025 WL 3139642, (Cal. Ct. App. 11/10/25).

## RECENTLY FILED ACTIONS

Removed action in which network hospital seeks \$2,664,214.22 in alleged underpayments associated with 253 claims.

Affiliated hospital system in network with host plan seeks to recover benefits for claims denied by home plan involving claims for seven members, asserting breach of contract under the BlueCard Program.

Member seeks ERISA benefits for denied coverage of Onabotulinum Toxin A (Botox) for migraine treatment at previously approved dosage.

Member seeks benefits under a self-funded ERISA plan for treatment at Telos Residential Treatment Center. Denial was based on lack of medical necessity pursuant to MCG Guidelines.

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## RECENTLY FILED ACTIONS

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Member seeks benefits under a self-funded ERISA plan for residential treatment at ViewPoint Center, Vista Adolescent Treatment Center, and Waterfall Canyon Academy, and alleges MHPAEA violations. Denials were based on lack of medical necessity.

Removed action in which network orthopedist asserts breach of contract involving wrongful denials and improper recoupments totaling \$512,220.

Removed action in which member seeks Medicare Advantage benefits for Wegovy to treat cardiovascular treatment. Claim was denied as excluded weight loss drug.

OON laboratory and alleged assignee seeks benefits under ERISA and Medicare Advantage plans related to COVID-19 testings. Plaintiff also asserts rights under FFCRA, CARES Act, and alleges violation of California's Unfair Competition Law, Health and Safety Code and Insurance Code.

Member seeks benefits under a self-funded ERISA plan for residential care at New Haven Residential Treatment Center and alleges MHPAEA violations. Denial was based on lack of medical necessity pursuant to MCG Guidelines.

OON air ambulance provider seeks to collect benefits under three alleged Single-Case Agreements, alleging underpayments totaling \$68,092.87. One of the claims was denied as a duplicate and another was denied for lack of medical necessity.

OON dialysis provider asserts horizontal agreements, hub and spoke agreements, principal-agent combinations, anti-competitive information exchange, and agreements to unreasonably restrain trade in violation of the Sherman Act, state antitrust statutes, and consumer protection laws associated with use of Multiplan repricing tool.

Removed action in which hospital in network with host plan asserts underpayment of claims pursuant to alleged implied contract and quantum meruit.

Member challenges subrogation claim of \$102,526.84 against her personal injury settlement funds, asserting that medical treatment paid by insurer was unrelated to the underlying accident that was the basis of the settlement.

Removed action in which member seeks ERISA benefits alleging denials and excessive discounting of claims for medical services exceeding \$200,000. Member is being balance billed.

Removed action in which member seeks coverage of approximately one month of treatment by OON providers and asserts breach of contract, breach of duty of good faith and fair dealing, and violation of California Business & Professions Code §17200. The claims were denied as out of network.

Removed action in which member seeks ERISA benefits for the denial of reimbursement of surgeon's fee billed of \$10,110 and nurse practitioner's fee of \$2,527.50 in connection with alleged pre-approved surgery.

Member seeks ERISA benefits for pre-authorized spinal surgery totaling \$486,228.62 following moving vehicle accident. Reason for denial was not stated in complaint.

OON laboratory and alleged assignee seeks benefits under ERISA and Medicare Advantage plans related to COVID-19 testings. Plaintiff also asserts rights under FFCRA, CARES Act, and alleges violation of California's Unfair Competition Law, Health and Safety Code and Insurance Code.

Member seeks more than \$64,000 in ERISA benefits associated with 10 weeks of residential treatment at True North Wilderness Therapy and asserts violations of state and federal mental health parity laws. The claim was denied pursuant to a wilderness therapy exclusion.

Member challenges subrogation lien of dual Medicare Medicaid plan following automobile accident and associated treatment. Plaintiff asserts priority under the Michigan No-Fault Act.

Removed action in which alleged double assignee seeks recovery against 19 insurers for allegedly wrongfully denied and underpaid claims. The cause of action against each is a book account.

Removed action in which member asserts negligence and breach of contract claims against Medicaid MCO arising from denial of authorization for baseline brain MRI associated with relapse of acute lymphoblastic leukemia. Plaintiff then developed potentially avoidable complications from CAR-T treatment.

## RECENTLY FILED ACTIONS – NSA CLAIMS

OON plastic surgeon seeks to collect NSA awards related to treatment of three members. For Member One, CPT 19318-RT was billed at \$75,000, the claim was denied, and the award amount was \$75,000. For Member Two, CPT 19318-62-LT was billed at \$75,000, the payment allowed was \$1,256.69, and the award amount was \$75,000. For Member Three, CPT codes 19318-LT and 19318-RT were each billed at \$75,000, the payments allowed were \$1,005.35 for 19318-LT and \$2,010.70 for 19318-RT, and the award amount was \$75,000 for each code.

OON intraoperative neurophysiologist seeks to collect NSA awards related to treatment of six members. The award amounts are \$51,264 for CPT codes 95941, 95938-26, 95886-26, and 95913-26; \$42,864 for CPT codes 95941, 95938-26, 95939-26, and 95861-26; \$47,364 for CPT codes 95941, 95938-26, 95939-26, and 95861-26; \$19,893.75 for CPT codes 95941, 95861-26, 51785-26, 95885-26, and 95913-26; \$47,364 for CPT codes 95941, 95938-26, 95939-26, and 95961-26; \$38,364 for CPT codes 95941, 95938-26, 95939-26, and 95961-26.

OON laparoscopic surgeon seeks to collect NSA awards related to treatment of two members whose claims were denied. For Member One, CPT 47563 was billed at \$62,889.71, and the award amount was \$62,889.71. For Member Two, CPT 44970 was billed at \$41,926.50, and the award amount was \$24,000.

OON plastic surgeon seeks to collect NSA awards related to treatment of seven members. The awards were \$40,000 for CPT codes 19380-RT and 14001-LT; \$7,145 for CPT 19120; \$150,769.86 for CPT codes 14301 (3 units), 14302, and 11772 (2 units); \$37,230 for CPT codes 19350 and 19342; \$79,138 for CPT 19318-50 (2 units); \$45,000 for CPT 19316; and \$32,000 for CPT 14301.

OON plastic surgeon seeks to collect NSA awards related to treatment of nine members. The award amounts were \$57,500 for CPT codes 19350 and 19357; \$19,770 for CPT codes 11772 and 14302; \$12,300 for CPT 15777; \$48,000 for CPT codes 15771 (2 units) and 15772; \$13,995 for CPT 15200; \$32,800 for CPT codes 19342-LT and 15777-RT; \$39,105 for CPT codes 14301 and 15570; \$69,000 for CPT 19318; and \$40,957.50 for CPT codes 15777-RT, 15777-LT, 19120, and 19342.

OON plastic surgeon seeks to collect NSA awards related to treatment of five members. The award amounts were \$21,000 for CPT 13151; \$7,500 for CPT 15771; \$24,300 for CPT codes 15772 and 15771; \$78,500 for CPT codes 14301 and 14302; and \$19,875 for CPT 14301.

OON pain management specialist seeks to collect NSA awards related to treatment of four members. For Member One, CPT codes 36224, 36227, 76377, and 76937 were billed at \$98,605.20, the payments allowed were \$579.60, and the total award was \$94,125.20. For Member Two, CPT 22853 was billed at \$86,000, the payment allowed was \$672.76, and the award amount was \$86,000. For Member Three, CPT 22853 was billed at \$86,000, the payment allowed was \$1,037, and the award was \$43,500. For Member Five, CPT 69990 was billed at \$6,480, the claim was denied, and the award was \$6,480.

OON orthopedic surgeon seeks to collect NSA awards related to treatment of two members. For Member One, CPT codes 29827-RT, 29824-LT, and 29824-RT were billed at \$58,050, the payments allowed were \$817.22, and the total award was \$58,050. For Member Two, CPT 29881-LT was billed at \$23,000, the payment allowed was \$1,223.84, and the award was \$21,000.

Removed action in which hospital in network with host plan alleges underpayment of medical services, supplies, and equipment related to seven claims, asserting breach of implied-in-fact contract in the amount of \$154,750.08, or alternatively, quantum meruit in the amount of \$1,258,397.41.

OON plastic surgeon seeks to collect NSA awards associated with CPT codes 13132, 13152, 21320, and 99283. The total billed charges were \$35,600, the payments allowed were \$664.25, and the aggregate award was \$35,600.

OON pain management specialist seeks to collect NSA awards associated with CPT codes 58558 and 58301. The total billed charges were \$14,312, the payments allowed were \$5,059, and the aggregate award was \$9,377.75.

OON intraoperative neurophysiologist seeks to collect NSA awards related to treatment of three members. For Member One, CPT codes 95861-26 and 95955-26 were billed at \$7,742, payment was allowed only for CPT 95861-26 at \$121.85, and the total award amount was \$6,200.90. For Member Two, CPT codes 95938-26 and G0453 were billed at \$38,332, the payments allowed were \$685.32, and the total award amount was \$36,378. For Member Three, CPT 95955 was billed at \$5,817, the payment allowed was \$80.68, and the award amount was \$3,532.90.

OON plastic surgeon seeks to collect NSA award associated with CPT codes 27447-RT and 27447-LT. The total billed charges were \$198,408, the payments allowed were \$3,318.15, and the aggregate award amount was \$100,000.

OON spine surgeon seeks to collect NSA awards related to treatment of five members. For Member One, CPT codes 63047 and 63048 were billed at \$110,000, the payments allowed were \$5,735.41, and the total award amount was \$110,000. For Member Two, CPT codes 222845 were billed at \$131,000, the payments allowed were \$1,815.72, and the award amount was \$128,000. For Member Three, CPT codes 22612 and 35221 were billed at \$129,500, payment was allowed only for CPT 22612 at \$6,951.70, and the total award amount was \$120,999.99. For Member Four, CPT codes 22612 and 22845 were billed at \$138,250, the payments allowed were \$3,152.14, and the total award amount was \$135,000. For Member Five, 2 units of CPT 63047 were billed at \$85,000, the payments allowed were \$6,115.69, and the total award amount was \$73,925.

OON neurologist seeks to collect NSA awards related to treatment of two members. For Member One, CPT codes 99232 (7 units), 95720 (10 units), and 95718 (2 units) were billed at \$30,751.87, the total payments allowed were \$9,586.03, and the aggregate award was \$30,751.87. For Member Two, CPT codes 95720 (5 units), 99232 (5 units), 95718, and 99233 were billed at \$17,082.05, the payments allowed were \$10,180, and the aggregate award was \$13,725.68.

OON vascular surgeon seeks to collect NSA awards related to treatment of four members. For Member One, CPT 99284 was billed at \$6,000, the claim was denied, and the award amount was \$6,000. For Member Two, CPT 23930 was billed at \$22,000, the payment allowed was \$87.17, and the award amount was \$1,792.34. For Members Three and Four, CPT 99284 was billed at \$8,000 each, the payment allowed was \$102.12 each, and the award amount was \$8,000 each.

OON plastic surgeon seeks to collect NSA awards associated with CPT codes 19357 and 15771. The total billed charges were \$111,200, the payment allowed was only for CPT 19357 at \$1,181.04, and the aggregate award amount was \$95,500.

OON bariatric surgeon seeks to collect NSA awards related to treatment of three members. For Member One, CPT 44970 was billed at \$15,000, the payment allowed was \$765.65, and the award amount was \$11,250. For Member Two, CPT codes 47563 and 99283 were billed at \$32,075, the payments allowed were \$982.65, and the total award amount was \$31,053.85. For Member Three, CPT 47562 was billed at \$21,000, the payment allowed was \$2,284.72, and the award amount was \$15,750.

OON anesthesiologist seeks to collect NSA awards associated with CPT 22634. The billed charges were \$32,550, the payment allowed was \$88.92, and the award amount was \$28,608.

OON neurologist seeks to collect NSA award associated with CPT 49650-80-50. The billed charges were \$53,000, the payment allowed was \$120.31, and the award amount was \$20,000.

OON neurologist seeks to collect NSA awards related to treatment of two members. For Member One, CPT 95720 was billed at \$3,000, the payment allowed was \$312.11, and the award was \$3,000. For Member Two, four units of CPT 95720 were billed at \$12,000, the payments allowed were \$7,140, and the total award was \$12,000.

OON neurologist seeks to collect NSA awards related to treatment of three members. For Member One, the total award amount for CPT codes 95720 (6 units), 99223, 99232, 99233 (4 units), and 99356 was \$18,829.30. For Member Two, the total award for CPT codes 95720 (4 units), 99223, and 99233 (3 units) was \$12,820. For Member Three, the total award for CPT codes 95720 (3 units), 99223, 99233 (3 units), and 99417 was \$12,252.

OON orthopedic surgeon seeks to collect NSA award associated with 25605. Billed charges were \$10,325, the payment allowed was \$1,042.45, and the award was \$10,325.

OON plastic surgeon seeks to collect NSA awards related to treatment of two members. For Member One, CPT 15777 was billed at \$21,728, the payment allowed was \$698.02, and the award was \$21,728. For Member Two, CPT 15860 was billed at \$8,400, the claim was denied, and the award amount was \$6,300.

OON plastic surgeon seeks to collect NSA award associated with CPT 19364. Billed charges were \$67,500, the payment allowed was \$959.46, and the award was \$67,500.

OON plastic surgeon seeks to collect NSA award associated with CPT 13152. Billed charges were \$29,995, the payment allowed was \$1,099.24, and the award was \$29,619.

OON plastic surgeon seeks to collect NSA award associated with CPT 15734. Billed charges were \$50,000, the claim was denied, and the award was \$50,000.

OON plastic surgeon seeks to collect NSA awards related to treatment of three members whose claims were denied. For Member One, CPT 15770 was billed at \$8,112.12 with award amount of \$8,112.12. For Member Two, CPT 15772 was billed at \$4,375 with award amount of \$4,375. For Member Three, CPT codes 19342 and 19316 were billed at \$20,640 and \$17,400, respectively, with award amounts of \$20,640 and \$17,400.

OON orthopedist seeks to collect NSA awards related to treatment of two members. For Member One, CPT 24344 was billed at \$10,082.50, the claim was denied, and the award amount was \$10,082.50. For Member Two, CPT codes 22551, 20930, 22853 (2 units), 22845, and 22552 were billed at \$219,930, the payments allowed were \$6,363.61, and the total award amount was \$219,930.

ADDITIONAL NEWSWORTHY (REGULATORY)

US HHS OIG issues findings of the Kentucky State Auditor of Public Accounts asserting over \$800 million in payments made to Kentucky Medicaid MCOs associated with members concurrently enrolled in Medicaid in multiple states. The report recommends further coordination among MCOs, the federal government, and state governments to help curb concurrent capitation payments. Office of Inspector General’s Partnership with the Office of the Kentucky State Auditor of Public Accounts: State Auditor’s Report *How Kentucky Failed to Prevent Over \$800 Million of Medicaid Waste (A-09-23-02005)*, available at <https://oig.hhs.gov/documents/audit/11262/A-09-23-02005.pdf> (Nov. 7, 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	Excelsus Blue Cross Blue Shield	Kirby L.	2016-10-3	N.D. NY	Second	66	Kirby L. v. Excelsus 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

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**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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