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Managed Care Litigation Update®

NEWSWORTHY

Ninth Circuit reverses and remands summary judgment decision finding ERISA TPA violated Section 1557 through application of plan exclusion for gender affirmant care, but court affirmed finding that Section 1557 can apply to an ERISA third party administrator. *C.P. v. Blue Cross Blue Shield of Illinois*, USAC 9 Cir., No. 0:2023-cv-4331, — F.4th —, 2025 WL 3202338 (Doc. 99, Nov. 17, 2025). Previously reported at ***MCLU Vol. 165***.

District court dismisses with prejudice amended complaint of OON laboratory that asserted ERISA and breach of contract claims arising out of COVID-19 tests, finding the complaint failed to discuss the relevant plans at issue, demonstrate the plans covered the benefits sought, and state why the denials were wrong. *Murphy Medical Associates, LLC, et al. v. EmblemHealth, Inc., et al.*, USDC D CT, No. 3:22-cv-59-SVN, 2025 WL 3282251, (Doc. 76, filed Nov. 25, 2025).

Texas appellate court reverses lower court and mandates arbitration consistent with arbitration provision in network contract, finding that the question of who determines questions of arbitrability were placed with the arbitrator because the contract incorporated the AAA rules of arbitration. *Bluecross Blueshield of Texas v. Decatur Hosp. Authority*, Tex. App.—Ft. Worth, No. 2:25-81-cv, 2025 WL 3248094, (filed Nov. 20, 2025).

RECENTLY FILED ACTIONS

Hospital system that is in-network with host plan but not with home plan alleges wrongful denial of claims and seeks to collect $1,148,047.87 for medical services provided to sixteen members. Hospital asserts breach of contract, breach of implied-in-fact contract, and violations of ERISA.

Member seeks $47,990 in ERISA benefits associated with air ambulance from Hospital Metropolitano in Ecuador to Clinic Weston Hospital in Florida. Denial was based on lack of medical necessity and pre-authorization, and failure to file a timely claim.

Removed action in which hospital seeks $376,750.77 in FEHBA benefits. Plaintiff asserts claims are for quantum meruit, account stated, and promissory estoppel.

RECENTLY FILED ACTIONS

Member seeks approximately $120,000 in ERISA benefits to cover child's residential treatment at Avalon Hills Treatment Center, alleging failure to issue claim decision or pay claim.

Removed action in which member seeks $33,500 in ERISA benefits. Plaintiff asserts he was told his health insurance was in effect prior to scheduling a procedure. Payment was initially approved and reimbursed but later recouped on the grounds that coverage was inactive on the date of service. Plaintiff also alleges Kentucky Consumer Protection Act violations.

Employees seek to recover ERISA benefits from employer and plan and assert the employer's failure to pay premiums caused the termination of the plan without notice.

Member seeks over $75,000 in ERISA benefits associated with residential treatment at Trails Carolina and asserts violations of MHPAEA. Claims were denied pursuant to a wilderness therapy exclusion.

Putative class action alleges Defendants misrepresent their mental health provider networks in the provider directory and improperly rely on "ghost networks" for mental health treatment. Plaintiffs assert claims for improper denial of ERISA benefits, breach of fiduciary duty, MHPAEA violations, and breach of contract.

Member seeks $139,563 in ERISA benefits for air ambulance transportation from Banner Wyoming Medical Center in Wyoming to Colorado Children's Hospital Aurora Medical Campus in Colorado. The claims were denied as not medically necessary.

Member seeks $59,770 in ERISA benefits related to child's residential treatment at Elements Wilderness Program. The claim was denied pursuant to a wilderness therapy exclusion. Plaintiffs also allege violations of MHPAEA.

Network hospital system seeks confirmation of an arbitration award associated with plan's alleged failure to follow CMS's Two Midnight Rule with respect to its Medicare Advantage members.

Removed action in which member seeks benefits under supplemental Medicare plan for Ozempic or similar GLP-1 medications and reimbursement of its retail cost for two years. She alleges misrepresentation of drug coverage and failure to disclose prior authorization requirements in violation of Massachusetts state law.

Removed action in which member seeks $20,000 in ERISA benefits under a self-funded plan pertaining to an international claim and additionally seeks reimbursement for translation of medical documents, PDF/scanning software, and certified mail expenses. Denial was allegedly based on documents not received.

Member seeks ERISA benefits from a self-funded plan associated with residential treatment at Mountain Valley Treatment Center. Coverage was partially approved from April 22, 2024 through May 16, 2024, but denied thereafter as not medically necessary. Member also alleges violations of MHPAEA.

Lymphatic and pelvic physical therapy provider asserts violations of the Sherman Act and applicable state antitrust statutes, including horizontal agreements, hub-and-spoke arrangements, principal–agent combinations, and anti-competitive information exchanges associated with use of Multiplan reimbursement tools.

Removed action in which alleged double assignee asserts a balance of $1,421,743.43 accounts receivable for OON medical services rendered to members treated between January 7, 2020, and January 30, 2024. Plaintiff obtained "a deed of assignment for the benefit of creditors."

Removed action in which OON neurosurgeon seeks to collect additional benefits pursuant to Florida Statutes § 641.513 and/or § 627.64194 for an emergent lumbar interbody infusion performed on a member. The billed charges were $257,300, the payment allowed was $6,526.80, and the alleged balance is $250,773.20.

Removed action in which member alleges breach of contract, negligence, and bad faith related to denial of myocardial CT scans as not medically necessary. Member subsequently suffered a myocardial infarction and seeks compensatory and consequential damages, among others.

Removed action in which OON provider alleges violations of the ACA and the Ohio Prompt Pay Statute (R.C. §3901.381) for failure to pay $125,309.84 in alleged emergency services on behalf of marketplace member.

Removed action involves member claim for unspecified benefits involving care at Mayo Clinic. The claims were denied as not medically necessary.

Member seeks ERISA benefits associated with residential treatment at BlueFire Wilderness and Catalyst RTC and asserts violations of MHPAEA. The BlueFire claim was denied as investigational, and the Catalyst claim was denied as not medically necessary pursuant to MCG guidelines.

Member seeks over $30,000 in ERISA benefits and asserts her insurance lapsed without notice to her due to the employer's failure to remit premiums.

OON long term acute care facilities challenge payments processed through MultiPlan contract for four members and assert underpayment. Disputes involve bundling and "charge stripping."

OON freestanding emergency centers assert underpayment and seek relief following participation in Texas mandatory mediation regime.

Removed action involves pro se member who asserts plan violated the ADA and associated requirements by failing to provide the necessary amount of home health services, particularly 14 hours of home health aide support. Plaintiff asserts unlawful disability discrimination.

Member seeks ERISA benefits associated with inpatient hospitalization at the Lahey Hospital and Medical Center from May 13, 2025 through May 16, 2025. The claim was denied as not medically necessary.

Removed action asserts network hospital was underpaid on ICU claim exceeding $3.4 million. Plan categorized the level of care as general medical.

Member seeks ERISA benefits associated with residential treatment at Change Academy Lake of the Ozarks and asserts violation of MHPAEA. The claim was denied as not medically necessary pursuant to the CALOCUS-CASII criteria.

RECENTLY FILED ACTIONS – NSA CLAIMS

OON physician group seeks to collect NSA awards related to treatment of five members. For Member One, CPT codes 95861-26, 95941, 95955-26 and 95938-26 were billed at $28,949, the payments allowed were $301.45; and the total award amount was $4,217. For Member Two, CPT codes 95861-26-59, 95870-26, 95938-26, 95941, and 95955-26 were billed at $46,949, the payments allowed were $1,739.74, and the total award amount was $36,708.24. For Member Three, CPT codes 92653, 95938-26, 95941, and 95955 were billed at $31,453.50, the payments allowed were $948.78, and the total award amount was $24,310.36. For Member Four, CPT codes 95870-26, 95938-26, 95939-26, 95941, 95955-26, and 95999 were billed at $59,028.25, the payments allowed were $12,684,78, and the total award amount was $50,455.21. For Member Five, CPT 95955 was billed at $5,817, the payment allowed was $2,695.41, and the award amount was $5,817.

OON providers of intraoperative neuromonitoring seek to collect NSA awards related to treatment of seven members. The awards were $47,364 for CPT codes 95861-26, 95938-26, 95939-26, and 95941; $65,664 for CPT codes 95885-26, 95913-26, 95938-26, 95939-26, and 95941; $22,364 for CPT codes 51785-26, 95861-26, 95938-26 and 95941; $32,100 for CPT codes 95941, 95938-26, 95885-26, and 95909; $23,477 for CPT codes 95861-26, 95938-26, and 95941; $42,864 for CPT codes 95861-26, 95938-26, 95939-26, and 95941; and $37,665 for CPT codes 95861-26, 95913-26, 95938-26, and 95941.

OON orthopedic surgeon seeks to collect NSA awards related to treatment of three members. For Member One, CPT 26735 was billed at $12,831, the payment allowed was $738.36, and the award amount was $9,950. For Member Two, CPT codes 69990 and 22585 were billed at $22,390.40, payment was allowed only for CPT 22585 at $78.71, and the total award amount was $23,310.40. For Member Three, CPT codes 63047 (2 units) and 63048 were billed at $141,700, the payments allowed were $2,173.39, and the total award amount was $127,875.

OON plastic surgeon seeks to collect NSA awards related to treatment of eleven members. The award amounts are $264.16 for CPT 99283; $17,000 for CPT codes 99283 and 13133; $18,662.41 for CPT codes 99283 and 26356-FA; $18,750 for CPT 13132; $346 for CPT 99284; $264.16 for CPT 99283; $18,660 for CPT 15240-RT; $21,685 for CPT codes 10061, 11042, 12011 and 99283; $8,500 for CPT 11042; $6,000 for an unspecified procedure; and $8,494 for CPT 26478-LT.

OON plastic surgeon seeks to collect NSA awards related to treatment of four members. For Member One, CPT 14301 was billed at $51,658, the claim was denied, and the award was $44,000. For Member Two, CPT 19316 was billed at $106,020, the claim was denied, and the award was $53,010.19. For Member Three, CPT 21600 was billed at $51,035.78, the payment allowed was $40.19, and the award was $22,356.84. For Member Four, CPT 64910 was billed at $143,870.08, the payment allowed was $66.83, and the award was $42,500.

OON orthopedic surgeon seeks to collect NSA award associated with CPT codes 22856 and 76000. The total billed charges were $116,554.03, payment was allowed only for CPT 22856 at $1,836.47, and the aggregate award was $109,000.

OON orthopedist and neurosurgeon seeks to collect NSA awards related to treatment of six members. For Member One, CPT 36224, 36223-LT,61650 and 61651 were billed at $118,000, the payments allowed were $1,080.79, and the total award was $74,265.83. For Member Two, CPT 69990 was billed at $6,000, the payment allowed was $313.40, and the award was $426.22. For Member Three, CPT 63047 was billed at $85,000, the payment allowed was $1,240, and the award was $2,480.92. For Member Four, CPT codes 36245, 75710, and 76937 were billed at $22,500, the payments allowed were $160.90, and the total award was $6,620.40. For Member Five, CPT codes 36224-50, 36227-50, 36228, 36228-59, 75710, 76377-26, and 76377-59 were billed at $206,000, the payments allowed were $2,208.94, and the total award was $158,000. For Member Six, CPT 63047 was billed at $85,000, the payment allowed was $1,726.26, and the award was $85,000.

OON physician seeks to collect NSA awards related to treatment of two members whose claims were denied. For Member One, CPT 63047 was billed at $99,125.39 and the award was $74,343.98. For Member Two, CPT 76000 was billed at $16,688.80 and the award was $14,000.

OON plastic surgeon seeks to collect NSA awards related to treatment of four members. For Member One, CPT codes 99285 and 26765 were billed at $13,992, the payments allowed were $1,039.27, and the total award was $11,967. For Member Two, CPT codes 25565 and 99284 were billed at $13,843, the payments allowed were $1,121.42, and the total award was $7,144.40. For Member Three, CPT 25565 was billed at $13,020, the payment allowed was $935.93, and the award was $13,020. For Member Four, CPT codes 99825 and 24587 were billed at $23,467, the payments allowed were $2,188.57, and the total award was $19,600.25.

OON plastic surgeon seeks to collect 2 NSA awards. Billed charges for CPT 19364 were $150,000, the claim was denied, and the award was $75,000. Billed charges for CPT 64910-RT were $143,870.08, the amount allowed was $272.43, and the award was $32,892.72.

ADDITIONAL NEWSWORTHY (REGULATORY)

CMS issues proposed rule to simplify and refocus the Star Ratings system for Medicare Advantage plans, including by announcing it will not move forward with the Health Equity Index reward. Medicare Program; Contract Year 2027 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, and Medicare Cost Plan Program, 90 Fed. Reg. 54894, (issued Nov. 28, 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.

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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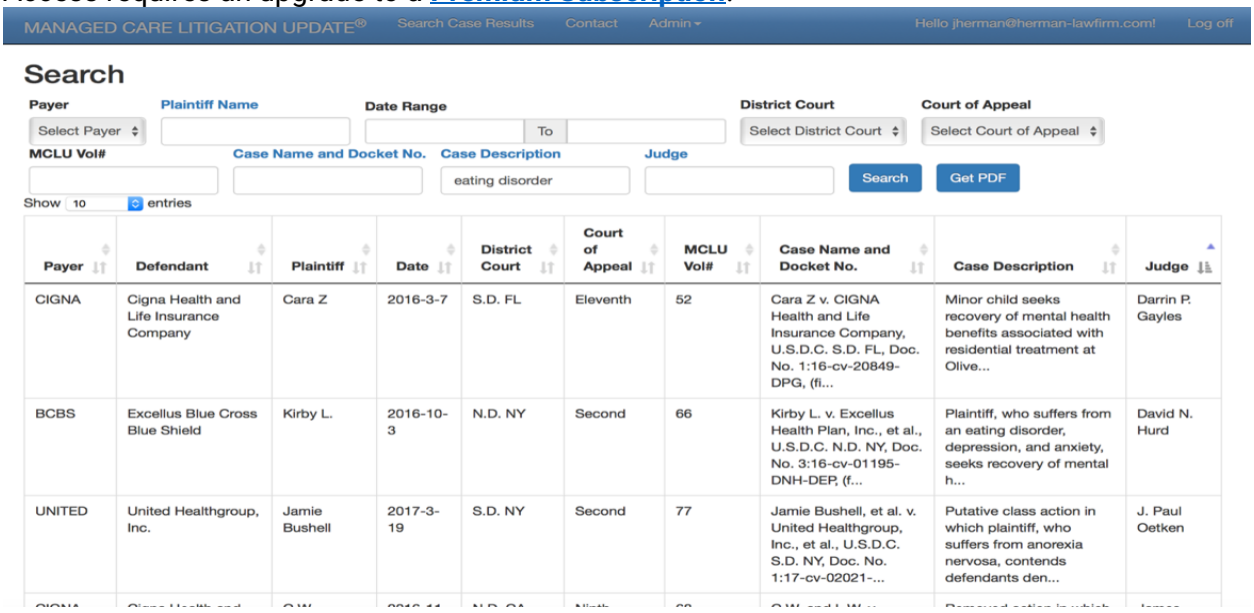

Payer	Defendant	Plaintiff	Date	District Court	Court of Appeal	MCLU Vol#	Case Name and Docket No.	Case Description	Judge
CIGNA	Cigna Health and Life Insurance Company	Cara Z	2016-3-7	S.D. FL	Eleventh	52	Cara Z v. CIGNA Health and Life Insurance Company, U.S.D.C. S.D. FL, Doc. No. 1:16-cv-20849-DPG, (fi...	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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