

Managed Care Litigation Update®

NEWSWORTHY

U.S. Supreme Court reverses decision of Louisiana Court of Appeal pertaining to state law purporting to immunize providers from liability during public health emergencies, writing that “[d]efining the scope of liability under state law is the State’s prerogative” but that “a State has no power to confer immunity from federal causes of action.” *Doe v. Dynamic Physical Therapy, LLC*, USSC, No. 25-180, 607 U.S. —, — S.Ct. —, 2025 WL 3506945, (filed Dec. 8, 2025).

U.S. Ninth Circuit issues two unpublished decisions finding that state law claims arising from pre-service phone calls involving questions about coverage have an impermissible connection with an ERISA plan and are therefore preempted. *Dedicato Treatment Center, Inc. v. Aetna Life Ins. Co.*, USAC 9 Cir, No. 0:24-cv-6487, 2025 WL 3269214, (Doc. 39, filed Nov. 24, 2025); *Healthcare Ally Management of California, LLC v. United Healthcare Services, Inc.*, USAC 9 Cir., No. 0:24-cv-5178, 2025 WL 3485391, (Doc. 47, filed Dec. 4, 2025). Previously reported at *MCLU Vols. 239 and 246*.

New Jersey district court grants motion to dismiss, finding that the Federal Arbitration Act and No Surprises Act do not create a private right of action to enforce IDR awards issued pursuant to the NSA. *Mitchell F. Reiter MD PC v. Horizon Blue Cross Blue Shield of New Jersey*, USDC D NJ, No. 2:25-cv-12526-WJM, 2025 WL 3514300, (Doc. 13, filed Dec. 8, 2025). Previously reported at *MCLU Vol. 276*.

RECENTLY FILED ACTIONS

Member seeks benefits and claims reliance on alleged promise of full coverage for Jungian therapy, which was fully covered only for the first session and partially reimbursed for subsequent weekly treatments before coverage was terminated after six months. Member asserts breach of contract and promissory estoppel, alleging false assurances and abrupt denial caused financial harm and health risks, and further claims bad faith and negligent misrepresentation.

Removed action in which a network podiatric practice asserts claims for breach of contract and violations of Florida state law after providing services to a member between June 19 and August 30, 2023 that were initially paid but later recouped as alleged overpayments totaling \$448,076.71 for 34 claims. Basis of recoupment was that plan had incorrectly paid as primary. Provider also seeks declaratory judgment to stop all collection efforts.

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RECENTLY FILED ACTIONS

Member seeks ERISA benefits and challenges denial of vertebral body tethering surgery for a 12-year-old with adolescent idiopathic scoliosis. Denial was based on classification as experimental or unproven.

Removed action in which OON provider seeks \$404,477.74 in benefits and asserts underpayment of emergency services provided to plan members between 2023 and the time of filing.

Removed action in which pro se member seeks Medicare Advantage benefits for MRI following an automobile collision.

Removed action in which OON hospital seeks \$2,080,325 in benefits and asserts underpayment of emergency medical services provided between 2023 to present.

Member seeks ERISA benefits associated with CPT codes 43774 and 43775 and 43281 and asserts underpayment. The Complaint does not state whether member is being balance billed. Payments were allowed for CPT 43281 at \$4,353.36. Claims for CPT codes 43774 and 43775 were denied for lack of information/authorization. Plaintiff asserts an underpayment of \$128,838.40 based on the 80th percentile of Fair Health.

Member seeks ERISA benefits for child's residential treatment at Catalyst Residential Treatment Center from December 6, 2022 to December 2, 2023. The claims were denied on the grounds that 24-hr nursing was not available at the location. Member also alleges violations of MHPAEA.

Member seeks over \$48,000 in ERISA benefits for child's residential treatment at Open Sky Therapy. Certain psychotherapy claims were covered but the remaining claims were denied on the grounds that a wilderness program is not covered. Member also alleges violations of MHPAEA.

OON hospital seeks \$859,410.29 in benefits for 37 claims provided between April 8, 2021 and December 20, 2024 and asserts underpayment. Plaintiff asserts breach of implied contract and quantum meruit.

OON plastic surgeon seeks benefits for post-operative services associated with total knee replacement and treatment of associated complications. The alleged patient responsibility remains unpaid. Plaintiff asserts an interpleader claim to collect outstanding amounts.

Member seeks ERISA benefits under a self-funded plan for child's residential treatment at Alpine Academy Residential Treatment Program from April 26, 2024 through November 22, 2024. Claim was denied on grounds that facility lacked accreditation. Member also alleges violations of MHPAEA.

Member seeks benefits related to residential substance use disorder treatment. Claim was denied on the grounds that services were not covered. Member alleges breach of contract and violation of MHPAEA.

Member seeks benefits under both COBRA and current employment plan for cardiac catheterization. The billed charges were \$53,663.00, and claims were submitted to both plans. One plan initially paid \$21,938.81 but later recouped payment as overpayment. The other plan denied payment, citing the need for an explanation of benefits from the other insurer. Member alleges wrongful recoupment, improper coordination of benefits, and failure to pay benefits under ERISA.

OON free-standing emergency center (FEC) and alleged assignee seeks \$440,026.12 in benefits and asserts underpayment of emergency treatment provided to two members on billed charges of \$451,609.10. FEC asserts violation of Texas Insurance Emergency Care Statute and breach of contract.

Acute care hospitals in-network with host plan allege wrongful denials and underpayments by home plan and seek benefits related to treatment of six members. The alleged outstanding amounts are \$63,379.79, \$305,000.84, \$34,540.45, \$105,310.93, \$27,021, and \$97,152. Plaintiffs assert breach of contract under network agreements, breach of implied-in-fact contract, and breach of contract for plans not subject to ERISA.

Member seeks \$28,325 in ERISA benefits associated with dental implant surgery and alleges misrepresentations about coverage, providing false network information, engaging in administrative obstruction, structural conflict of interest, bad faith denial after inducing detrimental reliance, and fiduciary breaches.

Member seeks over \$103,000 in ERISA benefits associated with residential treatment at Innercept, LLC and asserts violations of MHPAEA. Prior authorization was denied on the grounds the facility does not provide 24-hour nursing.

RECENTLY FILED ACTIONS – NSA CLAIMS

OON plastic surgeon seeks to collect NSA award associated with CPT 19380. The total charges were \$200,000, the payment allowed was \$182.81, and the award was \$50,000.

OON neurologist seeks NSA awards related to treatment of three members. For Member One, CPT codes 28400-RT and 99285 were billed at \$86,278.27, the payments allowed were \$1,081.01, and the total award amount was \$50,076. For Member Two, CPT codes 20680-RT and 7600 were billed at \$95,340.20, payment of \$2,053.33 was allowed only for CPT 20680-RT, and the aggregate award amount was \$52,000. For Member Three, CPT codes 20605-RT, 24342-RT, and 29105 were billed at \$80,810.65, payment of \$1,050.64 was allowed for CPT codes 20605-RT and 24342-RT, and the aggregate award was \$60,700.

OON plastic surgeon seeks to collect NSA awards related to treatment of six members. For Member One, CPT codes 35703, 35703-LT, 11971-LT, 11971-RT, 19370-LT, 19370-RT, 32900-RT, and S2068-LT were billed at \$131,528.80, the claims were denied, and the total award was \$105,951.55. For Member Two, CPT codes 38530-50-80, 15002-RT-59, and 32900-50-80 were billed at \$81,627, the claims were denied, and the total award was \$68,470.38. For Member Three, CPT codes 49591-80, 35216-80-LT, S2068-80-50, S2068, and 32900 were billed at \$424,835.68, the claims were denied, and the total award was \$275,362.06. For Member Four, CPT codes 38530-RT-80 and 32900-RT-80 were billed at \$36,500, the claims were denied, and the total award was \$36,500. For Member Five, CPT 35703-RT was billed at \$3,482.60, the payment allowed was \$1,480, and the award was \$3,482.60. For Member Six, CPT codes 32900 and 15002 were billed at \$31,600, the claims were denied, and the total award was \$25,850.

OON plastic surgeon seeks to collect NSA awards related to treatment of two members. For Member One, CPT S2068-80-LT was billed at \$122,742, the claim was denied, and the award amount was \$80,000. For Member Two, CPT codes S2068-RT-80 and 35703-LT-80 were billed at \$133,142, payment of \$72.23 was allowed only CPT 35703-LT-80, and the aggregate award was \$133,142.

OON anesthesia group seeks to collect \$1,767,499.35 in NSA awards involving 620 IDR disputes and further alleges violations of the Connecticut Unfair Insurance Practices Act.

ADDITIONAL NEWSWORTHY (REGULATORY)

Illinois legislature creates Immunization Advisory Committee within the Department of Public Health and requires as a preventive health service coverage of immunizations and countermeasures recommended within the State Guidelines for Communicable Disease Prevention issued by the Director of Public Health. 2025 Ill. Legis. Serv. P.A. 104-439 (H.B. 767) (West) (approved Dec. 2, 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



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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