

Managed Care Litigation Update®

NEWSWORTHY

Sixth Circuit reverses summary judgment in favor of ERISA plan on claim for residential treatment, finding the denial after 21 days of providing coverage was procedurally arbitrary and capricious because the explanation offered “disregards the MCG Guideline, the medical evidence, and [the plan’s] prior assessment of [member’s] need for treatment at Elevations.” *T.E. v. Anthem Blue Cross and Blue Shield, et al.*, USAC 6 Cir., No. 0:2025-5407, — F.4th —, 2026 WL 172050, (Doc. 38, filed Jan. 22, 2026). Previously reported at *MCLU Vol. 193*.

Louisiana appellate court vacates \$400 million verdict against insurer and in favor of OON plastic surgeon after finding that the jury was not appropriately instructed on the justifiable reliance element of the fraud claim, where provider alleged insurer committed fraud by authorizing services and then paying less than billed charges. *St. Charles Surgical Hospital, L.L.C., et al. v. Louisiana Health Service & Indemnity, et al.*, La.App. 4 Cir., No. 2025-CA-0290, — So.3d —, 2026 WL 183770, (issued Jan. 23, 2026).

District court largely adopts the recommendations of the magistrate in granting, in part, plan’s motion to dismiss claims of the underpayment, but the court rejected the magistrate’s recommendation to dismiss the unjust enrichment claim because under New York law, for emergency claims, the insurer cannot succeed in arguing the insurer has received no benefit for purposes of an unjust enrichment claim. *Long Island Plastic Surgical Group, P.C. v. Unitedhealthcare Insurance Company of New York, Inc., et al.*, USDC ED NY, No. 2:21-cv-5825-JS-ST, 2026 WL 161152, (Doc. 83, filed Jan. 21, 2026). Previously reported at *MCLU Vol. 187*.

RECENTLY FILED ACTIONS

Removed action in which OON plastic surgeon and alleged assignee seeks to collect \$73,083.43 in additional reimbursement as the unpaid portion of billed charges or alleged UCR for CPT codes 15736, 11012, 25545, 20955 and 20680. The allowed payment was \$324.52. Plaintiff alleges violations of Florida Statutes §§ 627.64194, 641.513, 627.6471, 627.6472, 627.6131, 627.6698, and 627.428.

Member seeks ERISA benefits under a self-funded plan for child’s residential mental health treatment at Solacium Sunrise from March 28, 2023 to June 11, 2024 and asserts violations of MHPAEA. Coverage was provided through the first 41 days but denied thereafter for lack of medical necessity pursuant to the CALOCUS-CASII standards.

Dual-eligible member of DSNP seeks enrollment in separate DSNP that provides managed long-term care (MLTC) benefits and asserts she meets the eligibility requirements and has requested enrollment in the MLTC DSNP.

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RECENTLY FILED ACTIONS

Medicare Advantage plan challenges its star rating, asserting that CMS's reliance on purportedly corrected data for calculation of the Medication Adherence for Hypertension measure cost the plan over \$32 million. The plan asserts CMS had indicated it would be relying on plan year 2023 data that was released in July 2024, but instead CMS relied on corrected data released in a September 2024 report.

Member seeks ERISA benefits for residential mental health treatment at Gateway Academy, LLC from April 7 to June 24, 2025. Plaintiff asserts the associated services were approved at an in-network level but that the claims were never paid.

Member seeks ERISA benefits for subacute residential mental health treatment at 3East Residential Program from February 28, 2024 through July 2, 2024. Payor denied coverage for lack of medical necessity pursuant to CASII Level 5 Criteria. Member also asserts MHPAEA and Massachusetts Parity Law violations.

OOB surgeon and alleged assignee seeks ERISA benefits from a self-funded plan and asserts underpayment of CPT codes 64493:50, 64494:50 and 64495:50, totaling \$22,676 on November 11, 2021, and CPT codes 0213T:50, 0214T:50, 0215T:50 and 0215T:50 totaling 25,176 on December 29, 2021. Plaintiff asserts it was told no preauthorization was required and reimbursement would be issued at 60% of UCR. Plan allowed \$945.24 for the November 11, 2021 billed charges, and 945.24 for the December 29, 2021 billed charges.

Removed action in which OOB medical provider seeks \$542,737.77 in ERISA benefits on billed charges of \$595,305. Plan allowed \$52,567.23 in the aggregate. Provider asserts violations of Florida Statute § 641.513.

Member seeks ERISA benefits and asserts pre-authorization for spine surgery related to CPT codes 22600, 20930, 22614, 22849, and 23045 was wrongfully denied. The claim was denied pursuant to CPB for Spinal Surgery: Laminectomy and Fusion.

Provider groups join MDL asserting antitrust violations in use of Multiplan out-of-network pricing tool.

Member seeks ERISA benefits for residential mental health treatment at Heritage School from October 29, 2024 to January 5, 2025. Member alleges that coverage was provided but that reimbursement was inconsistent and lower than payments made by other payors. Plaintiff also asserts MHPAEA violations.

Dual-eligible member of DSNP seeks enrollment in separate DSNP that provides managed long-term care (MLTC) benefits and asserts she meets the eligibility requirements and has requested enrollment in the MLTC DSNP.

Health system alleges at least \$1.2 million in damages caused by data breach and associated delays by payment processor.

OON plastic surgeon seeks to collect NSA awards related to treatment of five members. For Member One, CPT code 11971-LT was billed at \$4,790.40, the allowed amount was \$322.12, and the award was \$4,790.40. For Member Two, CPT codes 15003-RT-59, 15002-RT-59, and 35703-LT-59 were billed at \$6,982.90, the claims were denied, and the award was \$5,237.17. For Member Three, CPT code S2068-RT was billed at \$122,742, the allowed amount was \$31,000, and the award was \$74,999.99. For Member Four, CPT codes 35703-RT, 11971-LT and 19370-LT were billed at \$10,473, the total allowed amount was \$1,390.73, and the aggregate award was \$7,854.75. For Member Five, CPT code 38530-RT was billed at \$13,500, the claim was denied, and the award was \$10,125.

Removed action in which alleged double assignee of emergency physician group asserts underpayment. Plaintiff's claims are for unjust enrichment and suit on account.

OON plastic surgeon seeks to collect NSA awards related to treatment of two members. For Member One, CPT code S2068-80-LT was billed at \$122,742, the claim was denied, and the award was \$80,000. For Member Two, CPT code S2068-RT-80 was billed at \$122,742 and CPT 35703-LT-80 was billed at \$10,400. The allowed amount was \$72.23 for CPT 35703-LT-80. The awards were \$122,742 and \$10,400, respectively.

Network hospital seeks \$250,343.60 for authorized inpatient treatment provided to member from November 21 to December 21, 2019. Plaintiff alleges that home plan mistakenly processed the claim as out of network and issued \$104,983.03 directly to the member instead of paying the hospital at the network rates.

Removed action in which alleged double assignee of emergency physician group asserts underpayment. Plaintiff's claims are for unjust enrichment and suit on account.

OON plastic surgeon seeks to collect NSA awards related to medical treatment of ten members. The awards are \$38,000 for CPT code 19357-AS-LT-59; \$38,000.01 for CPT 19318-50; \$80,000 for CPT 14302-RT-59; \$38,000.01 for CPT 19318-AS-50; \$98,000 for CPT 19357-50; \$76,000 for CPT 15570-RT-AS; \$99,999.99 for CPT 19357-50; \$39,000 for CPT 19350-50; \$17,200 for CPT 15002; and \$24,000 for CPT 14301-LT-59.

Member challenges \$467,808.41 ERISA lien following alleged fault of providers in failing to timely recognize fetal heart rate abnormalities, resulting in permanent neurologic injuries. Plaintiff asserts the plan does not disavow the made whole doctrine or common fund doctrine. Plaintiff asserts claims for declaratory judgment and breach of fiduciary duty.

OON freestanding emergency centers assert underpayment of claims and pursue additional reimbursement under Texas state law following participation in the mandatory mediation process. Billed charges were \$78,882.62 and the amount paid was \$1,299.

OON provider of "in-patient and at home diagnostic services for individual suffering from sleep and insomnia-related conditions" seeks over \$4 million and asserts underpayment and wrongful denials of over 2,400 claims.

Insurer asserts fraudulent scheme by billing company to obtain inappropriate NSA awards by falsely attesting to the qualification of Medicaid and Medicare claims.

Member seeks ERISA benefits from self-funded plan for residential treatment at Elevations RTC and asserts violations of MHPAEA. Coverage was provided from November 14, 2023 to January 24, 2024 but denied thereafter as not medically necessary pursuant to the CALOCUS-CASII criteria.

Insurer asserts fraudulent scheme by billing company to obtain inappropriate NSA awards by falsely attesting to the qualification of Dual Special Needs Plan claim.

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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, (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-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

ADDITIONAL NEWSWORTHY (REGULATORY)

CMS issues final rule to close Medicaid tax “loophole” by requiring State proposals for Medicaid tax waivers to be “generally redistributive” via revisions to 42 C.F.R. 433.68(e), in part implementing revisions to 42 U.S.C.A. 1903(w) passed as part of the One Big Beautiful Bill Act. Medicaid Program; Preserving Medicaid Funding for Vulnerable Populations—Closing a Health Care-Related Tax Loophole, 91 Fed. Reg. 4794-01, (issued Feb. 2, 2026).

[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.

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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