

Managed Care Litigation Update®

NEWSWORTHY

District court grants motion to dismiss underpayment claims of two OON plastic surgery groups, finding that state law claims based on the allegation of a promise to pay 80% of Fair Health during a phone call to validate coverage were preempted by ERISA. *Rowe Plastic Surgery of New Jersey, LLC, et al. v. Anthem Blue Cross Blue Shield of Colorado*, USDC ED NY, No. 1:23-cv-4536-RER-JAM, 2026 WL 540767, (Doc. 30, filed Feb. 26, 2026). Previously reported at *MCLU Vol. 227*.

District court dismisses 3-page complaint of account stated asserted by alleged double assignee, finding that claims involving ERISA plans are dismissed with prejudice and that claims based on Medicare Advantage or other plans are dismissed without prejudice. *SM Medical Holdings Corporation v. United Healthcare Services, Inc.*, USDC D NJ, No. 3:25-cv-1549-ZNQ-JBD, 2026 WL 540175, (Doc. 21, filed Feb. 26, 2026). Previously reported at *MCLU Vol. 267*.

Delaware magistrate judge recommends dismissing NSA claims of neuromonitoring groups, finding that there is no private right of action under the FAA, NSA, or ERISA. *SpecialtyCare, Inc., et al. v. Cigna Healthcare, Inc.*, USDC D DE, No. 1:24-cv-1378-RGA, 2026 WL 483259, (Doc. 26, filed Feb. 20, 2026). Previously reported at *MCLU Vol. 263*.

RECENTLY FILED ACTIONS

Adversary proceeding in which the hospital's bankruptcy estate seeks to recover \$1,399,999.94 in post-petition setoffs and alleges violation of the automatic stay. Payor advanced \$1,541,184 under a loan agreement and agreed to take remittance deductions. After hospital filed for bankruptcy, Payor took ten weekly offsets allegedly outside the agreed upon deduction period.

Removed action in which member seeks Medicare Advantage benefits for inpatient care at an acute rehabilitation facility following a fall and combined with Member's Parkinson's disease. Claims were denied for lack of medical necessity.

Removed action in which infusion therapy provider seeks at least \$2,158,053 in alleged underpayments for services provided from 2023 to 2025 and alleges that the Ancillary Provider Agreement requires reimbursement paid at ASP + 20% rather than the ASP + 17%. Plaintiff also seeks \$75,954.27 in Medicare Advantage benefits for preauthorized services involving CPT J3357. The claims were denied on the grounds that the services are excluded when provided in an outpatient infusion setting.

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RECENTLY FILED ACTIONS

Member, through her surgeon as alleged attorney-in-fact, seeks \$224,071.55 in ERISA benefits for an OON emergency spine surgery performed at a network facility. The total billed charges were \$231,323, and the allowed amount was \$7,251.45. Plaintiff asserts underpayment.

Adversary proceeding in which the Litigation Trustee seeks to recover \$114,640,955.27 involving 4,708 claims for OON emergency services and elective care provided to members between March 15, 2016 and May 31, 2021. Of the disputed claims, \$111,504,935.27 relate to ERISA plans and \$3,136,120 were non-ERISA. Approximately, 85% involve self-funded plans, while 15% involved fully-funded plans. Plaintiff asserts quantum meruit and violations of state law.

Member, through his surgeon as alleged attorney-in-fact, seeks \$16,363.09 in ERISA benefits for an OON surgical treatment performed following multiple dog bite lacerations. The total billed charges were \$16,924, and the allowed amount was \$560.91. Plaintiff asserts he was balance billed.

Putative class action in which Member seeks \$8,805 in benefits under a Medicare Supplement Plan for a pre-authorized eyelid surgery following a Mohs procedure and associated post operative care. Plaintiff asserts the claim was denied pursuant to an alleged "phantom" requirement that the provider "must participate in Medicare." Plaintiff also asserts violation of the New Jersey Consumer Fraud Act.

Member seeks ERISA benefits under a self-funded plan for back surgery and associated treatment. Basis for denial is not stated.

Alleged assignees of bankruptcy claims of provider groups that opted out of prior MDL class-action settlement asserts affiliated health plans engaged in illegal market allocation conspiracy, price-fixing, monopolization and related antitrust violations.

Removed action in which home health provider seeks to collect \$385,847.48 associated with pre-authorized services from January 1, 2023 to the present. Plaintiff asserts no EOB nor payment has been provided.

Member seeks over \$180,000 in ERISA benefits for her child's OON residential treatment at Aspiro Education, LLC d/b/a Daniel's Academy from October 17, 2022 to October 28, 2023. Coverage was approved through February 6, 2023, but denied thereafter for lack of medical necessity pursuant to the MCG Adult 26th Edition and later correcting to MCG Child and Adolescent 26th Edition during the appeal. Plaintiff also alleges violation of MHPAEA.

Removed action in which alleged double assignee of emergency medical providers asserts underpayment of claims. Billed charges were approximately \$1.98 million. Plaintiff asserts breach of implied contract and violations of Mass. Gen. Laws c. 176G, § 5(f) and c. 93A.

Member seeks over \$191,000 in ERISA benefits under a self-funded plan for residential treatment for his child at Confluence Behavioral Health from September 5, 2023 to December 3, 2023 and at Cornerstones of Maine from December 4, 2023 to September 1, 2024. The claims from Confluence were initially denied as not covered services, later for lack of required certification, and ultimately as uncovered supervised transitional living services. Cornerstones' claims were denied as not covered service. Plaintiff also alleges MHPAEA violations.

Member seeks over \$750,000 in ERISA benefits from a self-funded plan for her child's residential treatment at Solacium New Haven beginning February 17, 2025 through the plan termination on July 31, 2025. Claims were denied for lack of medical necessity pursuant to CASII Level 5 criteria. Plaintiff also alleges violations of MHPAEA.

Removed action in which Member seeks benefits and asserts damages against government health insurance plan. Plaintiff alleges that pre-authorization for a spine surgery was delayed until after the policy expired and only partially approved, causing ongoing pain, suffering, and financial hardship.

Removed action in which alleged double assignee of emergency claims asserts underpayment and seeks to collect approximately \$2.78 million. Plaintiff asserts breach of implied contract and violations of Mass. Gen. Laws c. 176G, § 5(f) and c. 93A. Payor contends that the subject plans are governed either by ERISA or the Medicare Act.

Removed action in which pro se Medi-Cal member seeks transportation benefits for purposes of training with service dog and asserts that denial of associated claims is a refusal to provide reasonable accommodations under the ADA.

Removed action in which OON hospital asserts underpayment of claims involving emergency mental health treatment.

Removed action in which network hospital seeks more than \$4 million in alleged underpayments, the majority of which involves Medicare Advantage claims. The disputed claims involve DRG downgrades and denials for lack of medical necessity.

RECENTLY FILED ACTIONS – NSA CLAIMS

Removed action in which OON plastic surgeon seeks to collect NSA awards associated with CPT codes 14301 and 14302. The total billed charges were \$252,184, the allowed amounts were \$239.39, and the aggregate award was \$241,184.

Payor seeks vacatur of IDR awards allegedly obtained through fraud, recovery of damages for claims tainted by illegal kickbacks, and injunctive relief to halt purported fraudulent schemes. Plaintiff alleges that claims were submitted based on unlawful kickbacks to surgeons intended to generate IOM referrals, and improper use of the IDR process for ineligible IOM services. Plaintiff further asserts violations of RICO.

Removed action in which OON plastic surgeon seeks to collect NSA award associated with CPT 13131. The total billed charges were \$9,500, the allowed amount was \$193.52, and the award was \$9,500.

Removed action in which OON pain management specialist seeks to collect NSA awards associated with CPT codes 64490, 64491 and 64492. The total billed charges were \$22,250, the allowed amounts were \$306.90, and the aggregate award was \$21,025.

Removed action in which OON plastic surgeon seeks to collect an NSA award associated with CPT 22614. The total billed charges were \$60,000, the claim was denied, and the aggregate award was \$50,000.

Removed action in which an OON orthopedic surgeon seeks to collect NSA awards related to treatment of five members. For Member One, two units of CPT 64713 were billed at \$351,948.92 each, and the award amounts were \$80,000 and \$30,000, respectively. For Member Two, CPT 23515-LT was billed at \$89,720.15, and the award was \$954.05. For Member Three, CPT 20930 was billed at \$56,230.18, and the award was \$10,625.67. For Member Four, CPT 22845 was billed at \$89,456.14, and the award was \$53,455.98. For Member Five, CPT 29125-RT was billed at \$13,187.32, and the award was \$13,153.28.

Removed action in which an OON orthopedic surgeon seeks to collect NSA awards related to treatment of two members. For Member One, CPT 64715 was billed at \$351,948.92, and the award was \$120,000. For Member Two, CPT 20605-RT was billed at \$825, and CPT 76000 at \$16,688.80, and the award amounts were \$825 and \$13,604, respectively.

Removed action in which an OON colorectal surgeon seeks to collect NSA awards related to treatment of six members. The aggregate award for CPT codes 46922, 46924, and 46930 was \$15,735. The aggregate award for CPT codes 46505 and 46255 was \$17,400. The aggregate award for CPT codes 46505, 46930, 46604, and 46270 was \$45,144.36. The award for CPT 46604 was 30,000. The aggregate award for CPT codes 46505, 46930, and 46200 was \$14,245. The aggregate award for CPT codes 46200, 46230, 46604, 46505-50, and 46606 was \$53,360.

Removed action in which an OON surgeon seeks to collect NSA award associated with CPT 47562. The billed charges were \$7,000, the allowed amount was \$208.18, and the award was \$7,000.

Removed action in which OON orthopedic surgeon seeks to collect NSA award associated with CPT 63018. Billed charges were \$99,999, the claim was denied, and the award was \$54,000.

Removed action in which OON plastic surgeon seeks to collect NSA awards associated with CPT codes 19318 and 15877. Billed charges were \$150,000 and 16,580. Payment was allowed only for CPT 19318 at \$1,725.42, and the awards were \$150,000 and \$16,580, respectively.

Removed action in which OON plastic surgeon seeks to collect NSA award associated with CPT 14301. Billed charges were \$26,500, the allowed amount was \$1,034.91, and the award was \$20,000.

Removed action in which OON orthopedic surgeon seeks to collect NSA award associated with CPT 29888. Billed charges were \$31,136, the allowed amount was \$1,508.60, and the award was \$31,136.

Removed action in which OON plastic surgeon seeks to collect NSA award associated with CPT 19318. Billed charges were \$75,000, the allowed amount was \$28,750, and the award was \$75,000.

Removed action in which OON radiology and pain management specialist seeks to collect NSA awards associated with CPT codes 64490, 64491, and 64492. The total billed charges were \$200,400, payment was allowed only for CPT 64491 at \$125.74, and the aggregate award was \$37,237.50.

Removed action in which OON orthopedic surgeon seeks to collect NSA award involving CPT 99284 and 27818. The aggregate award was \$9,930.

Removed action in which OON neurology group seeks to collect over \$170,000 in NSA awards involving CPT codes 95941, 95939, 95938, 95885, 95913, and 95861.

Removed action in which OON intraoperative neuromonitoring group seeks to collect NSA awards. The awards were \$7,000 for CPT 95941, \$2,550 for CPT 95938, \$600 for CPT 95937, and \$1,400 for CPT 95861.

Removed action in which OON plastic surgeon seeks to collect NSA award associated with CPT 13151. Billed charges were \$17,010, the amount paid was \$1,400.49, and the award was \$17,010.

Removed action in which OON physician's assistant seeks to collect NSA award associated with CPT 29826. Billed charges were \$7,499.75, the amount paid was \$89.37, and the award was \$7,499.75.

ADDITIONAL NEWSWORTHY (REGULATORY)

Washington Health Care Authority issues emergency rule updating covered benefits and limitations for the Apple Health Expansion program at WAC 182-525-0100 etc. 2026 WA Reg. 671830, WSR 26-04-004, (issued Feb. 18, 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.

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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-DEB, (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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