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Managed Care Litigation Update™

NEWSWORTHY

First Circuit affirms dismissal of putative class action asserting that exclusion of weight-loss medication amounted to unlawful disability discrimination, finding that the complaint fails to plausibly assert claims for proxy discrimination, intentional discrimination, or disparate impact. *Holland v. Elevance Health, Inc.*, USAC 1 Cir., No. 25-1359, --- F.4th ---, 2026 WL 850818, (filed Mar. 27, 2026). Previously reported at ***MCLU Vol. 257***.

District court finds that state causes of action arising from alleged grant of a network exception via telephone call are subject to ERISA preemption, addressing similar allegations in 47 related cases. *Plastic Surgery Ctr., P.A. v. Aetna Life Ins. Co.*, USDC D NJ, No. 1:23-cv-21439-ESK-AMD, 2026 WL 821139, (Doc. 91, filed Mar. 25, 2026). Previously reported at ***MCLU Vol. 235***.

Following prior remand to payor for further processing, district court grants cross motion for summary judgment to member seeking ERISA benefits for residential treatment, awarding benefits and finding that the plan was arbitrary and capricious in (1) responding to a 47-page psychological evaluation with only two conclusory sentences, and (2) changing from use of Optum LOC guidelines to CALOCUS-CASII guidelines in the final post-remand denial. *D.B. v. United Healthcare Ins. Co.*, USDC D UT, No. 1:21-cv-98-JNP-CMR, 2026 WL 851250, (Doc. 127, filed Mar. 27, 2026). Previously reported at ***MCLU Vol. 180***.

RECENTLY FILED ACTIONS

Member seeks $37,632.71 in ERISA benefits for treatment of her "calculus of gallbladder with acute cholecytitis with obstruction" and related surgery at Missouri Baptist Medical Center. Coverage was denied as not medically necessary because the hospital stay did not meet inpatient-level criteria under MCG Guideline M-555 (28th and 29th Editions) for ORG:M-555 (ISC) Gallbladder or Bile Duct Inflammation or Obstruction. Plaintiff alleges wrongful denial of ERISA benefits and breach of fiduciary duty.

Removed action in which hospital and alleged assignee seeks $123,523.83 in ERISA benefits for emergency medical services provided to a member from July 21 to July 24, 2024. Coverage was denied as not medically necessary. Plaintiff asserts claim under Ohio's Prompt Payment Law.

Removed action in which Member seeks damages for denial and delay of Remicade therapy which allegedly caused a relapse of Crohn's disease and development of fistula. Coverage was initially denied as excluded but later conditionally approved with site-of-care requirements tied to a specified provider. Plaintiff asserts state law claims for breach of contract and breach of fiduciary duty.

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RECENTLY FILED ACTIONS

Removed action in which Member seeks damages associated with claim for pre-authorized cranio-maxillofacial surgery that provider sent to collections. Payor initially denied the claim as dental, later paid it in full on appeal, then recouped the payment as a purported billing error for paying the wrong doctor. The claim remains outstanding. Plaintiff alleges violations of Wis. Stat. § 628.46 and Wis. Admin. Code Ins § 6.11.

Member seeks ERISA benefits for residential mental health treatment for her two children and asserts associated MHPAEA violations. Child One was transported by Right Direction from King County, WA to Second Nature in Duchesne, UT, and then at Gateway Academy. Right Direction billed $7,249.07, which was denied for missing information; Second Nature billed $49,100, and Gateway billed $101,000, both of which were denied as non-covered. Child Two was transported by Safeguard from King County, WA to ViewPoint in Syracuse, UT and received treatment before going to Sandhill Center. Safeguard billed $5,900 which was denied for missing information; ViewPoint billed $120,000, which was denied as non-covered non-emergent OON care outside Member's home or bordering states, and Sandhill billed over $253,800, which was denied for lack of medical necessity.

Network hospitals seek $291,324.74 in benefits for treatment of three members, alleging that home plan failed to pay contract rates under the BlueCard program, and seek to compel arbitration. Plaintiffs assert claims for breach of contract and violation of ERISA.

Member seeks $71,725 in ERISA benefits from a self-funded plan for the child's residential mental health treatment at Confluence Behavioral Health, LLC from March 20, 2023 to June 26, 2023. The claim was initially denied on the grounds the facility was not properly licensed and credentialed consistent with plan requirements. Plaintiffs also allege MHPAEA violation.

Removed action in which OON addiction treatment facility seeks $2,440,000 in benefits for treatment of members from February 1, 2025 to May 31, 2025. Plaintiff asserts negligent misrepresentation and alleges payor sought claim corrections and documentation while assuring payment would follow. Plaintiff also claims breach of implied-in-law contract and implied-in-fact contract.

Payor seeks declaratory and injunctive relief establishing that OON interventional pain specialist unlawfully and fraudulently initiated ineligible NSA IDR proceedings for Medicare and Medicaid claims. Plaintiff asserts common law fraud, alleging provider knowingly submitted ineligible claims and false certifications to obtain improper financial windfalls.

Payor seeks declaratory and injunctive relief establishing that OON anesthesiologist unlawfully and fraudulently initiated ineligible NSA IDR proceedings for Medicare and Medicaid claims. Plaintiff asserts common-law fraud, alleging provider knowingly submitted ineligible claims and false certifications to obtain improper financial windfalls.

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Member seeks ERISA benefits for physician-prescribed FlexStep lift system for child with cerebral palsy. The request was denied as not medically necessary.

Member seeks $74,365 in ERISA benefits under a self-funded plan for child's residential mental health treatment at True North Wilderness Program from December 19, 2022 to April 5, 2023. The claim was denied for lack of preauthorization. Plaintiff also asserts MHPAEA violation.

Putative class action in which members assert TPA maintained an inaccurate provider directory that amounted to a "ghost network" in which most of the behavioral health provider listings were inaccurate.

Member seeks ERISA benefits for child's residential mental health treatment at Summit Achievement from February 1, 2023 to May 12, 2023. The claims for residential services were denied for untimely filing, though plaintiff asserts there is no filing deadline for corrected claims.

Member seeks over $200,000 in ERISA benefits associated with residential treatment at In Balance Ranch Academy. The claim was denied for lack of medical necessity.

Member seeks ERISA benefits for speech and language therapy for autistic child. The claim was denied on the grounds the treatment was not improving the child's function.

Member seeks ERISA benefits associated with residential treatment at Ascend Healthcare and asserts violations of MHPAEA. Coverage was provided from January 27, 2025 through March 24, 2025 but denied thereafter as not medically necessary pursuant to the MCG guideline Residential Behavioral Health Level of Care, Child or Adolescent.

Removed action in which OON laboratory and alleged assignee seeks $5,193,475 in benefits and asserts a "systemic practice of disregarding, delaying, and denying claims" since 2020 involving 5,584 claims.

Removed action in which member seeks $4,240 in ERISA benefits associated with treatment at Physical Therapy Associates. The basis of denial or payment is not stated in the underlying Complaint.

OON laboratory and alleged assignee seeks over $29 million in benefits associated with drug testing services. The Complaint asserts that the claims were denied on the argument that no coverage is required for confirmatory and definitive drug testing by an independent, stand-alone laboratory when the specimens are collected by a substance use disorder treatment facility.

Adversary proceeding in which trustee of network hospital system seeks $6.36 million and asserts wrongful denials and underpayments involving 1,393 claims.

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RECENTLY FILED ACTIONS – NSA CLAIMS

OON air ambulance provider seeks to collect $244,998.74 in NSA awards. Plaintiff also alleges violation of the Illinois Consumer Fraud and Deceptive Business Practices Act.

Removed action in which an OON pain management specialist seeks to collect NSA awards associated with CPT codes 64483-50 and 77003. The billed charges were $89,600, the claims were denied, and the aggregate award was $56,400. Plaintiff pleads quantum meruit and unjust enrichment.

OON plastic surgeon seeks to collect NSA awards related to treatment of ten members. The awards were $17,500 for CPT 19371-LT-59; $66,000 for CPT 19357-50; $21,750 for CPT codes 15777-50 and 64646-59; $34,000 for CPT 15734-78; $99,000 for CPT 92068-LT; $99,000 for S2068-RT; $99,000 for CPT S2088-LT; $66,000 for CPT 19357-50; $12,412.92 for CPT 35216-80-59; and $24,000 for CPT 14301-59.

OON plastic surgeon seeks to collect NSA awards related to treatment of two members. For Member One, CPT 19357-50 was billed at $66,000, the claim was denied, and the award was $66,000. For Member Two, CPT codes 15777-50 and 64646-59 were billed at $21,750, the claims were denied, and the aggregate award was $18,750.

OON plastic surgeon seeks to collect NSA awards related to treatment of five members. The awards were $32,000 for CPT 14301-RT; $70,000 for CPT 19380-RT; $25,000 for CPT 19342-RT; $24,000 for CPT 14301-50; and $21,107.66 for CPT 14302.

Removed action in which an OON specialty care provider seeks to collect NSA awards related to treatment of seven members. The awards were $37,312.50 for CPT codes 29827-AS-RT and 29828-51-RT; $19,473.30 for CPT 29880-79-LT; $65,625 for CPT codes 27447-AS-LT and 27447-AS-79-RT; $20,250 for CPT 14301-80; $26,000 for CPT 29914-RT; $29,649.44 for CPT codes 26130-LT and 26615-LT; and $25,925 for CPT 29826-RT.

Removed action in which OON plastic surgeon seeks to collect NSA awards associated with CPT codes 13131 and 11442. The total billed charges were $20,890, the allowed amounts were $311.40, and the aggregate award was $20,395. Plaintiff asserts quantum meruit and unjust enrichment.

Removed action in which OON orthopedic surgeon seeks to collect NSA awards related to treatment of two members. For Member One, CPT code 22614 was billed at $29,500, the payment allowed was $119.34, and the award was $29,500. For Member Two, CPT 22853 was billed at $43,000, the payment allowed was $989, and the award was $43,000. Plaintiff asserts quantum meruit and unjust enrichment.

Removed action in which OON brain and spine surgeon seeks to collect NSA award associated with CPT 61760-50. The billed charges were $108,182, the claim was denied, and the award was $108,182.

Removed action in which OON intraoperative monitoring specialist seeks to collect NSA awards related to treatment of three members. For Member One, CPT codes 95861, 95937, 95938, and 95941 were billed at $35,900, the claim was denied, and the aggregate award was $35,286.35. For Member Two, CPT codes 95961, 95937, 95938, 95939, and 95941 were billed at $36,800, the claim was denied, and the aggregate award was $36,541.40. For Member Three, CPT codes 95861, 95937, 95938, and 95941 were billed at $26,500, the total payment allowed was $1,710.50, and the aggregate award was $26,120.10. Plaintiff asserts promissory estoppel as to claims for Members One and Two based on alleged promise to pay awards.

Removed action in which OON plastic surgeon seeks to collect NSA award associated with two units of CPT S2068. The billed charges were $150,000, the claim was denied, and the award was $131,250.

Removed action in which OON neurosurgeon seeks to collect NSA award associated with CPT 22551. The billed charges were $90,000, the claim was denied, and the award was $88,000.

Removed action in which OON orthopedist seeks to collect NSA awards related to treatment of seven members. The awards were $20,657 for CPT codes 13121-59-LT, 11044-59-LT, and 13122-59-LT; $39,013.65 for CPT codes 27829-RT, 11044-RT, 27860-58-RT, and 13120-58-59-RT; $10,194.44 for CPT 13121-58-59-RT; $4,007.15 each for two matters involving CPT 23570-LT; and $1,500 each for two matters involving CPT 99283-57. Plaintiff asserts unjust enrichment in the alternative.

Removed action in which OON plastic surgeon seeks to collect NSA awards related to treatment of two members associated with CPT 19318-LT. Billed charges on the first were $42,500, the payment allowed was $1,329.88, and the award was $42,500. Billed charges on the second were $42,500, the payment allowed was $1,852.30, and the award was $42,500. Plaintiff asserts quantum meruit, promissory estoppel and unjust enrichment.

Removed action in which OON plastic surgeon seeks to collect NSA awards related to treatment of three members. For Member One, CPT 99283 was billed at $7,000, the amount allowed was $104.16, and the award was $7,000. For Member Two, CPT 11042 was billed at $7,000, the amount allowed was $26.42, and the award was $7,000. For Member Three, CPT codes 99282 and 26775 were billed at $9,925, the total amount allowed was $491.31, and the aggregate award was $7,175. Plaintiff asserts quantum meruit, promissory estoppel and unjust enrichment.

Removed action in which OON surgeon seeks to collect NSA award associated with CPT 19357. Billed charges were $99,950, the amount paid was $4,570.32, and the award was $99,950.

Removed action in which OON plastic surgeon seeks to collect NSA awards. For CPT 64912, billed charges were $29,259, the amount paid was $474.94, and the award was $29,259. For CPT 19357, billed charges were $99,950, the amount paid was $1,866.02, and the award was $99,950. Plaintiff asserts unfair business practices, quantum meruit, unjust enrichment, promissory estoppel and other state law theories of recovery.

Removed action in which OON vascular surgeon seeks to collect 5 NSA awards. The awards were $65,000 for CPT 49020; $10,000 for CPT 99284; $50,000 for CPT 11046; $8,000 for CPT 99284; and $37,950 for CPT 47562.

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Removed action in which OON surgeon seeks to collect 5 NSA awards. The awards were $36,600 for CPT codes 99284-57 and 47562; $39,965.71 for CPT 15734; $40,500 for CPT 47562; $11,160 for CPT 27328-LT; and $8,000 for CPT 55559.

Removed action in which OON plastic surgeon seeks to collect a $20,560 NSA award associated with CPT 13132. Plaintiff asserts claims that include breach of express contract, account stated, quantum meruit, unjust enrichment, and promissory estoppel.

Removed action in which OON neurophysiologist seeks to collect $34,167.10 in NSA awards associated with CPT codes 95941, 95938, 95861, 95937, and 95939. Plaintiff asserts claims that include breach of express contract, account stated, quantum meruit, and unjust enrichment.

Removed action in which OON plastic surgeon seeks to collect $34,000 in NSA awards associated with CPT codes 99284 and 13152. Plaintiff asserts claims that include breach of express contract, account stated, quantum meruit, and unjust enrichment.

Removed action in which OON OBGYN practice seeks to collect 4 NSA awards. The awards were $3,901.20 for CPT 58350; $2,139.30 for CPT 99238; $68,815.20 for CPT 58150; and $84,405 for CPT 59510.

Removed action in which OON vascular surgeon seeks to collect 6 NSA awards. The awards were $36,400 for CPT 44970; $34,500 for CPT 47562; $1,000 for CPT 99284; $37,000 for CPT 47563; $8,000 for CPT 99284; and $22,500 for CPT 49592.

Removed action in which OON orthopedic surgeon seeks to collect 7 NSA awards. The awards were $22,500 for CPT 22843-80; $52,050 for CPT 22830-62-59; $29,620 for CPT 22845-80-59; $32,000 for CPT 63075-62-59; $26,000 for CPT 22853-80; $32,877 for CPT 63048-62-59; and $70,600.10 for CPT 63042-62.

Removed action in which OON plastic surgeon seeks to collect 4 NSA awards. The awards were $39,000 for CPT 19380-50; $14,850 for CPT 14001; $39,000 for CPT 19380-50; and $29,985 for CPT 19357.

Removed action in which OON orthopedic surgeon seeks to collect 4 NSA awards. The awards were $14,500 for CPT 64494-RT; $10,000 for CPT 64484-LT; $7,000 for CPT 62323; and $82,922.68 for CPT 22612.

ADDITIONAL NEWSWORTHY (REGULATORY)

New Hampshire legislature passes transparency requirements applicable to all of its state-regulated health plans that requires health plans to make available online three machine-readable files that show in-network rates for covered items and services, out-of-network allowed amounts for covered items and services, and negotiated rates and historical net prices for covered prescription drugs. NH ST § 420-J:29, 2026 New Hampshire Laws Ch. 5 (H.B. 705) (approved Mar. 16, 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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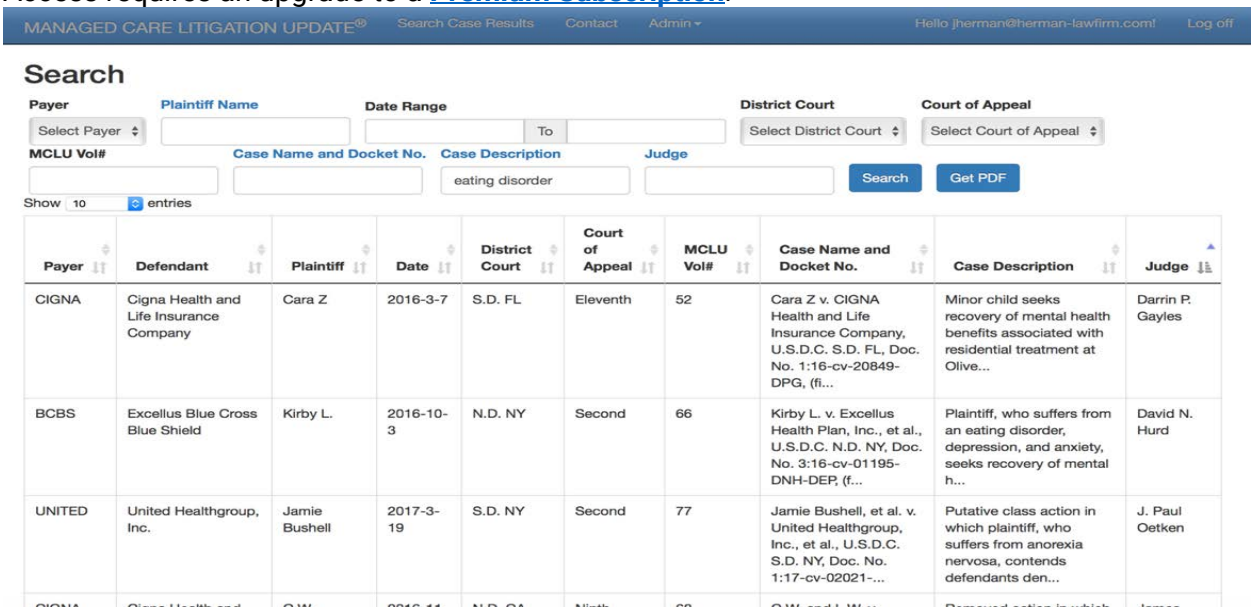

Payer	Defendant	Plaintiff	Date	District Court	Court of Appeal	MCLU Vol#	Case Name and Docket No.	Case Description	Judge
CIGNA	Cigna Health and Life Insurance Company	Cara Z	2016-3-7	S.D. FL	Eleventh	52	Cara Z v. CIGNA Health and Life Insurance Company, U.S.D.C. S.D. FL, Doc. No. 1:16-cv-20849-DPG, (fi...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