

# Managed Care Litigation Update®

## NEWSWORTHY

District court dismisses hospital claims asserting underpayment through the Blue Card program, finding that ERISA governs the reimbursement rather than implied in contract theories. *Regents of the Univ. of Cal. v. Horizon Blue Cross Blue Shield of N.J.*, USDC D NJ, No. 2:24-cv-7482, 2026 WL 1329562, (Doc. 50, filed May 13, 2026). Previously reported at *MCLU Vol. 252*.

District court denies, in part, motion to dismiss counterclaims of health plans that asserted OON SUD facility engaged in fraudulent scheme to waive co-pays and other coinsurance, unbundle and double bill certain lab services, and perform medically unnecessary services, finding that ERISA does not preempt the fraud claims. *Women's Recovery Ctr., LLC v. Anthem Blue Cross Life & Health Ins. Co., et al.*, USDC CD CA, No. 8:20-cv-102-JWH-ADS, 2026 WL 1288652, (Doc. 413, filed May 7, 2026). Previously reported at *MCLU Vol. 145*.

District court grants motion to dismiss of Medicaid MCO, finding that laboratory testing provider failed to provide any evidence that it was a third-party beneficiary of the insurance policies, that the MCO benefited from the laboratory's services to members, or that the complaint's general allegations against the Medicaid MCO created any genuine dispute of material fact regarding negligence. *Abira Med. Labs., LLC v. Healthy Blue*, USDC MD LA, No. 3:24-cv-1039-SDD-SDJ, 2026 WL 1276441, (Doc. 62, filed May 8, 2026).

## RECENTLY FILED ACTIONS

Removed action in which OON freestanding emergency center and alleged assignee seeks approximately \$250,000 in benefits. Billed charges were \$705,700.50, and the amount paid was \$13,819.14. Plaintiff asserts violations of the Texas emergency care statutes and breach of contract.

Removed action in which OON physician group asserts underpayment for emergency services between January 1, 2021 to July 31, 2023 at an in-network facility. Plaintiff seeks benefits for 117 claims with billed charges of \$179,501 and \$21,466.18 paid. Plaintiff alleges violations of Florida Statutes §§ 627.6131(7) and 641.3155(6).

Member seeks over \$250,000 in ERISA benefits for child's residential mental health treatment at Solacium Fulshear from March 26, 2024 to August 26, 2024. Plan denied coverage beginning May 30, 2024 on the basis that care was custodial and excluded. Plaintiffs also allege violation of MHPAEA.

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## RECENTLY FILED ACTIONS

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Removed action in which physical therapist seeks benefits for physical therapy and rehabilitative treatment provided to member following a motor vehicle accident. Plaintiff alleges that under MCL 500.3107d, the health insurer is responsible where no applicable PIP coverage exists and qualified health coverage is available.

Removed action in which OON orthopedic surgeon seeks damages alleging improper payment of covered and preauthorized services provided to two members. For Member One, the billed charges totaled \$195,175 and the payment was \$26,016.99. For Member Two, the billed charges totaled \$100,900, and the payment was \$10,239.67. Plaintiff also asserts negligent misrepresentation and promissory estoppel alleging payments were not based on UCR.

Bankruptcy litigation trustee asserts adversary proceeding and asserts that plan wrongfully denied and underpaid network hospital claims based on untimely filing, lack of medical necessity, and improper downgrading of DRGs and E/M levels across 4,800 claims. Plaintiff seeks recovery of approximately \$18.03 million.

OON home infusion therapy and specialty pharmacy seeks over \$6.9 million in claim associated with S9328. Plaintiff also challenges recoupment demands of approximately \$2.8 million across 7,700 claims between December 18, 2025, and February 9, 2026 based on plan exclusion.

Member seeks benefits and damages associated with being billed. Plaintiff asserts she was covered at the time of a surgery, though that contention is disputed by the plan, which accepted to refund of its payment on the grounds that coverage had not begun.

PBMs challenge California SB 41 on the grounds the formulary provisions, pharmacy network provisions, and PBM compensation provisions are preempted by ERISA.

Member seeks \$147,000 in ERISA benefits from a self-funded plan for child's residential mental health treatment at Second Nature Uintas from May 12, 2023 to August 2, 2023 and at Elevations Residential Treatment Center from September 13, 2023 to December 15, 2023. The claim for Second Nature was denied as a miscellaneous item that is not covered. The claim for Elevations was denied for lack of medical necessity pursuant to MCG criteria. Plaintiffs also allege violation of MHPAEA.

Removed action in which member seeks benefits and damages from insurers associated with mistaken reporting that member was deceased, resulting in denied claims.

OON orthopedic specialty practice asserts antitrust claims associated with use of Multiplan pricing tools to determine OON reimbursement rates.

OON surgical practice asserts antitrust claims associated with use of Multiplan pricing tools to determine OON reimbursement rates.

OON interventional pain management specialty group asserts antitrust claims associated with use of Multiplan pricing tools to determine OON reimbursement rates.

OON optometry specialty group asserts antitrust claims associated with use of Multiplan pricing tools to determine OON reimbursement rates.

OON mental health provider group asserts antitrust claims associated with use of Multiplan pricing tools to determine OON reimbursement rates.

OON physical therapy provider group asserts antitrust claims associated with use of Multiplan pricing tools to determine OON reimbursement rates.

OON physical therapy provider group asserts antitrust claims associated with use of Multiplan pricing tools to determine OON reimbursement rates.

Removed action in which member seeks damages arising from plan's denial of authorization request for inpatient post-operative care, allegedly resulting in premature discharge after major spinal surgery. Plaintiff alleges denial caused severe medical complications and loss of income. The complaint does not allege basis for the denial.

Member seeks over \$114,000 in ERISA benefits for child's residential mental health treatment at Viewpoint Center from February 29, 2024 to April 29, 2024. The claim was denied because network providers were available to provide the required care. Plaintiffs also assert violation of MHPAEA.

OON private psychotherapy practice group asserts antitrust claims associated with use of Multiplan pricing tools to determine OON reimbursement rates.

OON dermatology practice group asserts antitrust claims associated with use of Multiplan pricing tools to determine OON reimbursement rates.

OON physical therapy practice group asserts antitrust claims associated with use of Multiplan pricing tools to determine OON reimbursement rates.

OON pediatric practice group asserts antitrust claims associated with use of Multiplan pricing tools to determine OON reimbursement rates.

Removed action in which OON hospital system seeks benefits and asserts underpayment of 43 claims processed through the Blue Card program between May 8, 2023 and January 30, 2025. Billed charges were \$2,463,566.9, and the payments were \$76,156.14. Plaintiff asserts entitlement to \$374,359.60 under an implied in fact contract, or alternatively, \$2,387,410.79 under quantum meruit.

OON pediatric practice group asserts antitrust claims associated with use of Multiplan pricing tools to determine OON reimbursement rates.

OON physician group asserts antitrust claims associated with use of Multiplan pricing tools to determine OON reimbursement rates.

OON primary care and wellness practice group asserts antitrust claims associated with use of Multiplan pricing tools to determine OON reimbursement rates.

OON emergency physician group asserts antitrust claims associated with use of Multiplan pricing tools to determine OON reimbursement rates.

Removed action in which state seeks to recoup Medicaid funds allegedly overpaid as a result of allegedly illegal PBM functions involving manufacturer rebate negotiations, formulary design, contracting, and pricing.

Removed action in which member with a “Critical Illness with Cancer Recurrence” policy seeks benefits associated with heart attack. Plaintiff asserts the claim was mistakenly denied on the grounds there was no associated diagnosis.

## RECENTLY FILED ACTIONS – NSA CLAIMS

Removed action in which OON epileptologist seeks to collect NSA awards related to treatment of seven members. The awards were \$7,500 for CPT codes 95718 and 95720 (2 units); \$15,000 for CPT 95720 (5 units); \$3,387.05 for CPT 95720 (3 units); \$6,000 for CPT 95720 (2 units); \$12,000 for CPT 95720 (4 units); \$9,000 for CPT 95720 (3 units); and \$27,000 for CPT 95720 (9 units). Plaintiff asserts quantum meruit, promissory estoppel, and unjust enrichment.

Removed action in which OON orthopedic surgeon seeks to collect NSA award associated with CPT 27130-RT. Billed charges were \$99,269.40, the amount paid was \$3,100.76, and the award was \$99,269.40. Plaintiff asserts quantum meruit and unjust enrichment.

Removed action in which OON intraoperative neuromonitoring specialist seeks to collect NSA awards related to treatment of three members. For Member One, the billed charges totaled 56,911.25 for CPT codes 95939, 95870, G0453, 95938, and 95861, the payment was \$634.51, and the aggregate award was \$49,505.60. For Member Two, billed charges were 43,311.25 for CPT codes 95939, 995938, and 95861, the payment was \$587.21, and the aggregate award was \$40,948. For Member Three, billed charges totaled \$55,311.25 for CPT codes 95939, 95870, 95938-26, G0453, and 95861, the payment was \$647.05, and the aggregate award was \$49,180. Plaintiff asserts quantum meruit, promissory estoppel, and unjust enrichment.

Removed action in which OON neurophysiologist seeks to collect NSA awards related to treatment of three members for which all claims were denied. For Member One, the total billed charges were \$9,175 for CPT 95938-TC, and the award was \$9,175. For Member Two, the total billed charges were \$40,012 for CPT codes 95861, 95938, 95939, and 95940, and the aggregate award was \$37,884. For Member Three, the total billed charges were \$27,709 for CPT codes 95861-TC, 95938-TC, and 95940, and the aggregate award was \$27,672.

Removed action in which OON neurologist seeks to collect NSA awards related to treatment of two members. For Member One, the billed charges were \$10,500 for CPT 63048, the payment was \$293.15, and the award was \$10,500. For Member Two, billed charges totaled \$71,500 for CPT codes 61510 and 61510-AS, the payment was \$3,765.35, and the aggregate award was \$69,025. Plaintiff asserts quantum meruit and unjust enrichment in the alternative.

Removed action in which OON plastic surgeon seeks to collect NSA award associated with CPT 19357. Billed charges were \$99,950, the claim was denied, and the award was \$99,950. Plaintiff also alleges violation of Cal. Bus. & Prof. Code § 17200.

Removed action in which OON anesthesiologist seeks to collect NSA award associated with CPT 64636. Billed charges were \$24,146, the payment was \$133.23, and the award was \$20,524.10. Plaintiff asserts quantum meruit and unjust enrichment in the alternative.

Removed action in which OON surgeon seeks to collect NSA award associated with CPT 47562. Billed charges were \$55,902, the claim was denied, and the award was \$33,000. Plaintiff asserts quantum meruit and unjust enrichment in the alternative.

Removed action in which OON pain management specialist seeks to collect NSA awards related to treatment of three members. For Member one, billed charges were \$70,000 for CPT 36475-LT, the claim was denied, and the award was \$60,000. For Member two, billed charges were \$90,000 for CPT 36475-RT, the payment was \$471, and the award was \$60,000. For Member three, billed charges were \$48,000 for CPT 64635-LT, the claim was denied, and the award was \$33,000. Plaintiff asserts quantum meruit and unjust enrichment.

Removed action in which OON vascular surgeon seeks to collect NSA awards related to treatment of six members. The awards were \$50,000 for CPT 22558; \$17,938 for CPT 22558; \$122,456 for CPT codes 22588-62, 22845-59-80, and 22853-80; \$27,500 for CPT 22585-62; \$87,000 for CPT 22558-62; and \$44,923.50 for CPT codes 22585-62 and 22853-80.

Removed action in which OON orthopedic surgeon seeks to collect NSA award associated with CPT 29827-RT. Billed charges were \$12,000, the claim was denied, and the award was \$10,200. Plaintiff asserts quantum meruit and unjust enrichment.

Removed action in which OON orthopedic surgeon seeks NSA awards related to treatment of seven members. The awards were \$13,668.58 for CPT 2915-RT; \$206,876.75 for CPT codes 63048, 20936, 61783, and 22614 (5 units); \$145,454.79 for CPT codes 27695 and 27696-RT; \$101,280 for CPT codes 29879-LT and 29877-LT; \$6,724.94 for CPT codes 73502 and 73560; \$17,576.12 for CPT 99285; and \$118,116.60 for CPT codes 27235-LT, 99285, and 72195. Plaintiff asserts quantum meruit, promissory estoppel and unjust enrichment.

Removed action in which OON spinal surgeon seeks to collect NSA awards related to treatment of four members. The awards were \$11,965 for CPT 64712; \$143,269.82 for CPT codes 22865 and 63075; \$76,965 for CPT codes 63047 and 64712; and \$25,000 for CPT 63048. Plaintiff asserts quantum meruit, promissory estoppel and unjust enrichment.

Removed action in which OON intraoperative neuromonitoring specialist seeks to collect NSA awards related to treatment of three members. The awards were \$26,045 for CPT codes 95941, 95925, and 95928; \$37,489 for CPT codes 95941, 95925, 95926, 95939, and 95861; and \$15,000 for CPT 95939.

Removed action in which OON spinal surgeon seeks to collect NSA awards related to treatment of two members. For Member one, billed charges were \$69,448 for CPT 63075-80-59, the claim was denied, and the award was \$69,000. For Member two, billed charges were \$46,170 for CPT 22853, the payment was \$683.33, and the award was \$46,170. Plaintiff asserts quantum meruit, promissory estoppel and unjust enrichment.

Removed action in which OON neurosurgeon seeks to collect NSA awards related to treatment of two members. For Member one, the billed charges totaled \$135,300 for CPT codes 63047, 63030, 63042, 61783, the payment was \$12,397.66, and the aggregate award was \$130,350. For Member two, billed charges totaled \$50,325 for CPT codes 62223-AS and 61781-AS, the payment was \$513.07 for CPT 62223-AS only, and the aggregate award was \$50,325. Plaintiff asserts quantum meruit, promissory estoppel and unjust enrichment.

OON minimally invasive spine surgeon and alleged assignee seeks to collect NSA awards associated with allegedly preauthorized CPT codes 63030 and 69990. Billed charges totaled \$82,005, the payment was \$1,110.59, and the aggregate award was \$73,000. Plaintiff also alleges violation of Cal. Bus. Prof. Code §§17200-17210 and breach of ERISA duties under 29 U.S.C. § 1132(a)(3).

Removed action in which OON neurosurgeon seeks to collect NSA awards related to treatment of two members. For Member one, billed charges were \$12,375 for CPT 22010-80, the payment was \$250.60, and the award was \$12,375. For Member two, billed charges totaled \$108,900 for CPT codes 22612, 63042, 61783, 20930, 22852, and 20930, the payment was \$1,967.32 for CPT 22612 only, and the aggregate award was \$102,712.50. Plaintiff asserts quantum meruit, promissory estoppel and unjust enrichment.

Removed action in which OON neurophysiologist seeks to collect NSA awards related to treatment of thirteen members. The awards were \$24,175 for CPT codes 95938 and 95939; \$38,472 for CPT codes 95941, 95938, 95939 and 95861; \$28,878.75 for CPT codes 95941, 95938, 95861 and 95939; \$42,975 for CPT codes 95941, 95939, 95938 and 95861; \$33,400 for CPT codes 95941, 95938, 95939, 95885 and 95908; \$42,861 for CPT codes 95941, 95938, 95939 and 95861; \$31,899 for CPT codes 95941, 95938, 95885 and 95908; \$38,475 for CPT codes 95941, 95938, 95939 and 95861; \$29,550 for CPT codes 95941, 95938, 95885, 95907, 95867, 92652 and 92516; \$29,550 for CPT codes 95941, 95938, 95939 and 95861; \$63,361 for CPT codes 95941, 94938, 95939, 95822 and 95861; \$11,075 for CPT codes 95938 and 95885; \$36,364 for CPT codes 95941, 95938, 95939, 95861 and 95822. Plaintiff asserts quantum meruit, promissory estoppel and unjust enrichment.

Removed action in which OON spinal surgeon seeks to collect NSA awards related to treatment of seven members. The awards were \$11,128 for CPT 20680; \$24,640 for CPT codes 64494 and 64493; \$8,700 for CPT 64483; \$17,034 for CPT 64483; \$47,520.52 for CPT 63047; \$17,514 for CPT 64493; \$3,000 for CPT 20936. Plaintiff asserts quantum meruit, promissory estoppel and unjust enrichment.

Removed action in which OON plastic surgeon seeks to collect NSA award associated with CPT 15734. Billed charges were \$96,000, the amount paid was \$1,293.98, and the award was \$79,931.42.

Removed action in which OON neurosurgeon seeks to collect NSA award associated with CPT codes 63077, 22845, 20930, 20931, and 20936. The award was \$90,450.

Removed action in which OON neurosurgery practice seeks to collect \$347,824.54 pertaining to 13 NSA awards.

Removed action in which OON orthopedic practice seeks to collect \$177,255.43 pertaining to 8 NSA awards.

Removed action in which OON plastic surgeon seeks to collect \$148,791.65 pertaining to 13 NSA awards. Plaintiff asserts breach of contract, breach of implied covenant of good faith and fair dealing, account stated, quantum meruit, promissory estoppel, and unjust enrichment.

ADDITIONAL NEWSWORTHY (REGULATORY)

Departments of Treasury, Labor, and HHS propose rule to recognize certain fertility benefits as limited excepted benefits when coverage is limited to benefits for the diagnosis, mitigation, or treatment of infertility-related health conditions and when the benefits are provided by medical professionals. Excepted Fertility Benefits, 91 Fed. Reg. 27140, (published May 13, 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, (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

## 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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