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Managed Care Litigation Update®

NEWSWORTHY

Tenth Circuit concludes it lacks appellate jurisdiction over ERISA claim remanded to plan for further administration following summary judgment partially in member's favor, applying the finality principal to determine the decision was not yet final. *Kirsten W., et al. v. California Physicians' Service, et al.*, USAC 10 Cir., No. 25-4029, 2026 WL 1433128, (Doc. 70, filed May 21, 2026).

District court finds on cross-motions for summary judgment that CMS abused its discretion in considering 10 measures not collected under Section 1395w-22(e) (data instead collected from HEDIS, HOS, and CAHPS) in determining the Medicare STAR Rating of MAO, without engaging in notice and comment rulemaking. Setting aside the STAR Rating carries a potential $120 million benefit to MAO. *Clover Ins. Co. v. US Dept. of Health and Human Services, et al.*, USDC SD GA, No. 2:25-cv-142, 2026 WL 1483515, (Doc. 61, filed May 27, 2026).

District court grants in part motion to dismiss claims of OON laboratory, applying anti-assignment provisions to claims against certain ERISA plans, finding failure to exhaust administrative remedies for certain ERISA plans and a Medicare Advantage plan, and finding preemption of claims against FEHBA plans. *Abira Medical Laboratories, LLC v. Blue Cross and Blue Shield of Alabama*, USDC ED PA, No. 2:23-cv-5132-KBH, 2026 WL 1483479, (Doc. 44, filed May 27, 2026). Previously reported at *MCLU Vol. 239*.

RECENTLY FILED ACTIONS

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

Adversary proceeding in which debtor hospital system asserts breach of contract arising from an inpatient contract effective July 1, 2003 and an outpatient contract effective January 1, 2006. Plaintiff alleges payer improperly and unilaterally set the reimbursements beginning 2026.

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

OON plastic surgeon seeks $16,924 in ERISA benefits for alleged emergency plastic surgical treatment of complex dog bite involving facial lacerations on member. Payer issued payment of $560.91.

RECENTLY FILED ACTIONS

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

Removed action in which network stand-alone surgery center seeks approximately $250,000 and asserts breach of contract, citing wrongful denial of claims and improper termination of agreement. Payer allegedly acknowledged error in termination and indicated unpaid claims would be reprocessed.

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

Acute care hospital systems in-network with host plan allege wrongful denials of claims by home plan and seek benefits related to treatment of eleven members. Plaintiff asserts underpayments of $57,186.19; $54,508.27; $118,515.14; $68,875.57; $33,417.15; $26,280.79; $250,718.75; $157,888; $84,981.17; $137,232.02; $39,069.36. Plaintiffs seek to compel arbitration and assert breach of contract under network agreements, breach of implied-in-fact contract, ERISA violations, and breach of contract for plans not subject to ERISA.

Removed action in which alleged assignee of claims of OON emergency physician group seeks more than $18,000,000 in benefits and alleges underpayment of approximately 28,000 claims associated with CPT codes 99281 through 99285 and 99291, spanning from March 2022 through July 2023. Plaintiff asserts quantum meruit, unjust enrichment, breach of implied contract, and violations of New Mexico Prompt Payment Statutes.

Removed action in which OON neurosurgeon and alleged assignee seeks $411, 997.47 in benefits for emergency spinal surgeries provided to two members. For member one, billed charges were $150,650 and the payment was $3,429.79. For member two, billed charges were $265,650.98 and the payment allowed was $872.74.

Member seeks more than $49,000 in ERISA benefits for child's residential mental treatment at BlueFire Wilderness Therapy from May 22, 2020 to August 13, 2020. The claim was denied pursuant to wilderness therapy exclusion. Plaintiff also asserts violation of MHPAEA.

Putative class action in which member seeks $30,679.72 in ERISA benefits for proton beam radiation therapy. The claim was denied as not medically necessary.

Member seeks $48,375 in ERISA benefits from a self-funded plan for child's residential mental health treatment at True North from May 20, 2022 to August 3, 2022. Coverage was denied for lack of preauthorization. Plaintiff also asserts violation of MHPAEA.

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

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

Member seeks more than $387,000 in ERISA benefits from self-funded plan for child's residential mental health treatment at Innercept from February 5, 2024 through May 16, 2024. Coverage was provided through April 1, 2024 but denied thereafter for lack of medical necessity pursuant to MCG guidelines.

Removed action in which network hospitals seek $720,904.29 associated with Medicare Advantage claims for 340B drugs from January 8, 2018 to December 1, 2022. Plaintiffs assert that the retroactive increase of the Medicare rate by HHS should apply to the parties' contract.

Removed action in which physician group seeks more than $163,000 and alleges plan improperly issued checks which were deposited by an unauthorized third party into a bank account where Plaintiff has never maintained an account. Plaintiff asserts breach of contract and violation of Texas Prompt Payment of Claims Act.

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

Behavioral health providers asserts antitrust claims associated with use of Multiplan pricing tools to determine OON reimbursement rates.

Alleged assignee of health system asserts antitrust claims associated with use of Multiplan pricing tools to determine OON reimbursement rates.

Member seeks more than $55,825 in ERISA benefits under a fully insured plan for child's residential mental health treatment at Confluence Behavioral Health from June 1, 2023 to August 16, 2023. Claim was denied as OON. Plaintiff also asserts violation of MHPAEA.

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

Behavioral health clinician asserts antitrust claims associated with use of Multiplan pricing tools to determine OON reimbursement rates.

Mental health treatment facility asserts antitrust claims associated with use of Multiplan pricing tools to determine OON reimbursement rates.

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

SUD treatment facility asserts antitrust claims associated with use of Multiplan pricing tools to determine OON reimbursement rates.

Payor files adversary proceeding to contest the discharge-ability of a debt associated with a settlement agreement to resolve claims of fraudulent billing. Settlement agreement stated debt would not be dischargeable in bankruptcy.

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

Mental health treatment facility asserts antitrust claims associated with use of Multiplan pricing tools to determine OON reimbursement rates.

RECENTLY FILED ACTIONS – NSA CLAIMS

OON musculoskeletal specialist seeks to collect NSA awards. The awards were $37,000 for CPT 22610; $33,000 for CPT 63003; and $7,500 for CPT 22840.

OON neurosurgeon and spine specialist seeks to collect 2 NSA awards. The awards were $97,001 for CPT 22633 and $34,512 for CPT 22634.

OON surgeon seeks to collect 5 NSA awards. The awards were $45,000 for CPT 22612; $16,000 for CPT 22614; $16,000 for CPT 22614; $40,000 for CPT 22840; and $14,000 for CPT 22849.

Removed action in which OON spinal surgeon seeks to collect NSA awards involving denied claims. For CPT 22856, the award was $53,096.35. For CPT 64999, the award was $42,500. For CPT 22103, the award was $12,822. Plaintiff asserts quantum meruit, promissory estoppel, and unjust enrichment.

Removed action in which OON orthopedic surgeon seeks to collect NSA awards associated with CPT codes 29823-RT, 29826-RT-AS, 29821-RT-AS, 29828-RT, 29821-RT, 29823-RT-AS. The billed charges were $154,699.18, $182.32 was paid for CPT 29826-RT-AS, and the aggregate award was $154,699.18. Plaintiff asserts quantum meruit and unjust enrichment.

Removed action in which OON plastic surgeon seeks to collect NSA award associated with CPT 19357. Billed charges were $99,950, the payment was $69.14, and the award was $99,950.

OON plastic surgeon seeks to collect NSA awards associated with CPT codes 15734-50-62-59, 35703-LT-62-59, 52068-AS-50, 32900-AS-50-59, 35703-AS-LT-59, and 15002-AS-50-59. Billed charges were $416,684, the claims were denied, and the aggregate award was $383,070.38.

Bankruptcy estate seeks to collect over $340,000 in NSA awards through adversary proceeding and asserts a right of recovery under section 542(b) of the bankruptcy code.

ADDITIONAL NEWSWORTHY (REGULATORY)

HHS issues rule requiring new documentation by QHP agents and brokers that includes consumer attestations of eligibility and consent to enrollment in an FFE. 42 C.F.R. § 155.220(j)(2), (3), Patient Protection and Affordable Care Act, HHS Notice of Benefit and Payment Parameters for 2027; and Basic Health Program, (published May 20, 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.

MCLU is online and searchable.

The underlying database to this publication, containing approximately 5,000 federal cases reported in this publication, is online. The Case Description field is word searchable. Searches can also be performed by Payer, Date Range, District Court and/or Court of Appeal, citation, or Judge. Past issues are available for immediate download.

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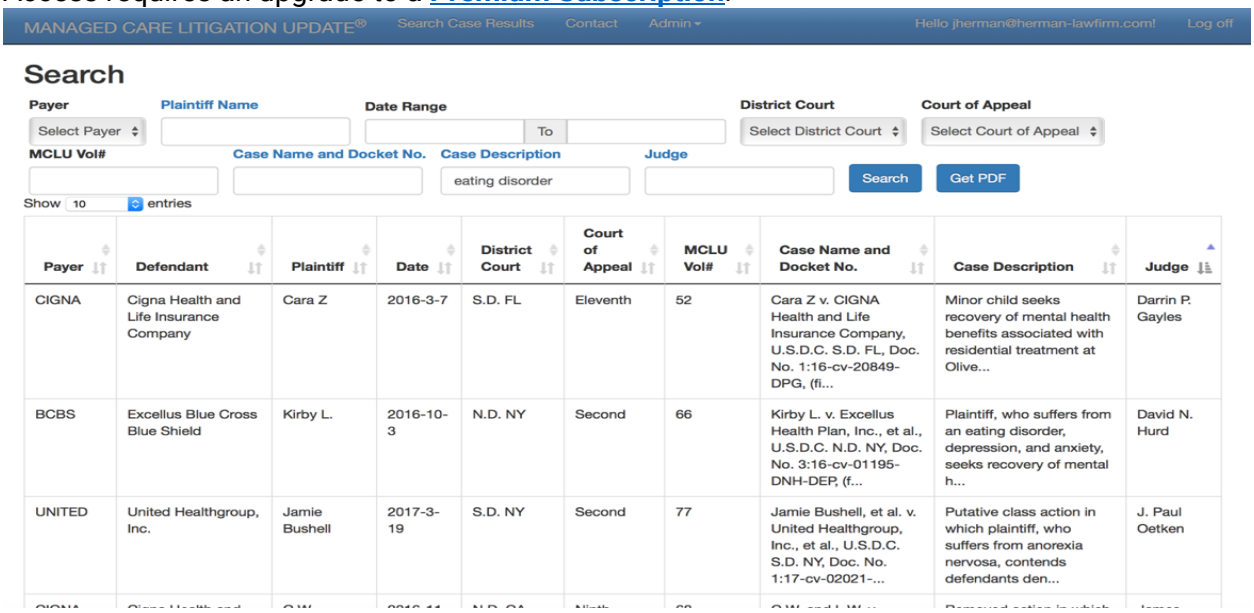

Payer	Defendant	Plaintiff	Date	District Court	Court of Appeal	MCLU Vol#	Case Name and Docket No.	Case Description	Judge
CIGNA	Cigna Health and Life Insurance Company	Cara Z	2016-3-7	S.D. FL	Eleventh	52	Cara Z v. CIGNA Health and Life Insurance Company, U.S.D.C. S.D. FL, Doc. No. 1:16-cv-20849-DPG, (fi...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