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Managed Care Litigation Update®

NEWSWORTHY

District court grants, in part, motion to dismiss of health plan and finds that an OON emergency physician cannot succeed on claims of implied contract and money had and received as a matter of Texas state law. *Patrick Shih v. Blue Cross and Blue Shield of Texas*, USDC SD TX, No. 4:25-cv-2274, 2026 WL 1691601, (Doc. 35, filed Jun. 10, 2026). Previously reported at ***MCLU Vol. 273***.

District court grants, in part, motion to dismiss of TPA and insurer and dismisses RICO claims and Tennessee prompt pay claims of emergency care provider group, finding that the amended petition failed to sufficiently plead the existence of a RICO enterprise and separately that Tennessee's prompt payment statute does not provide a private right of action. *Envision Healthcare Operating, Inc. v. United Healthcare Services, Inc., et al.*, USDC MD TN, No. 3:22-cv-693, 2026 WL 1623108, (Doc. 220, filed Jun. 4, 2026). Previously reported at ***MCLU Vol. 208***.

District court dismisses claims of intraoperative neuromonitoring providers seeking to collect outstanding NSA awards, finding merit in the motion to dismiss for lack of jurisdiction and failure to state a claim for the federal ERISA, FAA, and NSA claims and dismissing the state law claims for lack of an independent basis of federal jurisdiction. *SpecialtyCare Inc., et al. v. Health Care Service Corp.*, USDC ND IL, No. 1:24-cv-12935, 2026 WL 1556442, (Doc. 73, filed Jun. 2, 2026). NOA filed. Previously reported at ***MCLU Vol. 263***.

RECENTLY FILED ACTIONS

Removed action in which network hospital seeks benefits for medical services rendered to member from November 12, 2024 to November 18, 2024, alleging payer failed to pay 85.2% of the billed charges as allegedly required by the provider agreement. Billed charges were $129,964.83. Plaintiff asserts quantum meruit in the alternative.

Member seeks approximately $165,000 in benefits under COBRA coverage effective January 1, 2024 and asserts plan administrator failed to process his enrollment until August 2024. Payor denied coverage for hospitalization services rendered in January 2024 on the grounds that no active coverage was in effect on the dates of service.

Member seeks $16,436.19 in ERISA benefits from a self-funded plan for a preauthorized surgery, alleging payer improperly underpaid the claim by classifying the procedure as outpatient rehabilitation services. Billed charges were $77,481.78, and payer allowed $4,954.58.

RECENTLY FILED ACTIONS

Member seeks $120,000 in ERISA benefits from a self-funded plan for child's residential mental health treatment at Pacific Quest from June 2, 2023 to August 17, 2023. Coverage was approved for August 1 to the 16th but denied for June 2, 2023 through July 31 for lack of medical necessity. A subsequent admission from April 11, 2024 to May 30, 2024 was also denied for failure to meet inpatient criteria. Plaintiffs also assert violation of MHPAEA.

Removed action in which OON hospital seeks over $1 million in benefits from MAO plans for emergency services provided to members between September 2024 and December 17, 2024 spanning 110 claims, all of which were denied. Plaintiff asserts violation of Fla. Stat. Section 641.513(5), breach of implied-in-fact contract, quantum meruit, and breach of third-party beneficiary contract.

Removed action in which OON plastic surgeon alleges wrongful denial of coverage for emergency medical services. Plaintiff asserts breach of contract for claims involving assignments of benefits under plans without anti-assignment clauses and unjust enrichment for claims under plans with anti-assignment clauses.

Removed action in which alleged double assignee of claims of OON emergency physician group seeks more than $1.4 million and alleges underpayment from April 1, 2021 to July 31, 2023. Plaintiff asserts quantum meruit, unjust enrichment, breach of implied contract, and violations of Kentucky's Prompt Pay statutes.

Payor seeks to recover approximately $50 million in alleged overpayments from February 2022 through April 2026, and approximately $3 million in improper billings beginning March 2026, asserting that in-network surgical centers steered members to affiliated OON providers to inflate claims in violation of payor's contracts. Defendants allegedly submitted non-payable and misleading claims, engaged in undisclosed self-referrals, and misused the IDR process to obtain inflated payments and bill ineligible fees. Claims include fraud, unjust enrichment, tortious interference, New Jersey Insurance Fraud Act, and federal and state RICO violations.

Member seeks $60,840 in ERISA benefits for child's residential mental health treatment at Aspiro Adventure from October 2021 to January 2022. The claim was denied based on coverage exclusion for wilderness therapy. Plaintiffs also allege violation of MHPAEA.

Removed action in which OON dialysis clinics seek $321,256.85 in benefits related to alleged emergency medical services provided to two members. Plaintiffs assert quantum meruit, unjust enrichment, and violation of Cal. Business and Professions Code.

Removed action in which member seeks benefits under individual health plan for IVIG treatment from November 2024 to present, alleging wrongful denial as not medically necessary and asserting breach of contract.

Member seeks ERISA benefits for an allegedly pre-authorized outpatient cochlear implant procedure associated with CPT 69930. The coverage was denied as experimental. Plaintiff asserts violations of 29 USC §§ 1132 and 1104.

Removed action in which OON drug rehabilitation facility seeks benefits for preauthorized rehab services provided to members from September 2023 to June 2025. Payor denied claims for lack of certified addictionologist, later agreeing on appeal to pay only post November 2024 claims while continuing to deny earlier claims on that basis. Plaintiff alleges payor has not fully paid even the post November 2024 claims. Plaintiff asserts breach of implied-in-fact contract, quantum meruit/unjust enrichment, and promissory estoppel.

Members allege violations of ERISA and Section 1557 of the ACA and seek a litany of health benefits from 2008 through 2025. Plaintiffs assert various discrimination theories against their former state employer based on race, sex, and disability.

Member seeks ERISA benefits from a self-funded plan for child's residential mental health treatment at Mountain Valley Treatment Center from June 24, 2025 to October 10, 2025. Coverage was denied for multiple periods of treatment on the grounds that services were not covered, not eligible under the plan, not supported by medical record, or not medically necessary, despite alleged repeated authorizations from July 8, 2025 to September 16, 2025 confirming coverage at OON level, with several denials later reversed and paid upon reprocessing.

Health plan seeks to recover over $50 million in damages and asserts RICO case involving allegations that brokers and associated network fraudulently enrolled hundreds of international residents in ACA marketplace plans based on the lie that they were Maryland residents. The alleged scheme further involved large claims for high-end treatment shortly before the members would cancel their policies and cease paying premiums.

RECENTLY FILED ACTIONS – NSA CLAIMS

Payer seeks vacatur of IDR payment determinations and asserts fraudulent claims, misrepresentation of facts, and submission of ineligible disputes in violation of NSA. Plaintiff further alleges IDREs exceeded their authorities in issuing determinations over non-arbitrable disputes. Plaintiff asserts fraud and unjust enrichment claims.

Payor seeks vacatur of IDR determinations and asserts fraudulent claims, misrepresentation of facts, and submission of ineligible disputes in violation of NSA. Plaintiff further alleges IDREs exceeded their authority in issuing determinations over non-arbitrable disputes. Plaintiff asserts claims for fraud, unjust enrichment, declaratory and injunctive relief.

Removed action in which OON vascular surgeon seeks to collect NSA award associated with CPT 22845-59-80. Billed charges were $35,999, the payment was $213.32, and the award was $30,599.15. Plaintiff asserts claims for unjust enrichment, quantum meruit, breach of express contract, breach of the implied covenant of good faith and fair dealing, declaratory relief, violation of the New Jersey Prompt Payment of Claims Act, and, alternatively, third-party beneficiary liability.

Removed action in which OON air ambulance provider seeks to collect approximately $15,375.05 in NSA awards for air ambulance services provided to a member under self-funded plan.

Removed action in which OON plastic surgeon seeks to collect NSA awards associated with CPT codes 26765, 11760 and 11012. Billed charges were $41,334, the total payment was $1,055.14, and the aggregate award was $41,334. Plaintiff asserts quantum meruit, unjust enrichment, breach of implied in fact contract, promissory estoppel and violations of California Unfair Business Practices.

Removed action in which OON orthopedic surgeon seeks to collect NSA awards associated with CPT codes 22551, 22845, 22853, 22552 and 20936. Billed charges were $227,200, the total payment was $4,566.25, and the aggregate award was $206,620. Plaintiff asserts quantum meruit, promissory estoppel, and unjust enrichment.

Removed action in which OON pain management specialist seeks to collect NSA award associated with CPT 22634. Billed charges were $15,400, the payment was $141.50, and the award was $15,400. Plaintiff asserts claims including unjust enrichment, quantum meruit, breach of express contract, breach of the implied covenant of good faith and fair dealing, and violation of the New Jersey Prompt Payment of Claims Act.

Removed action in which OON intraoperative neuromonitoring specialist seeks to collect NSA awards associated with CPT codes 95940, 95938 and 95939. Billed charges were $40,174, the payment was $56.45 for CPT 95940, and the aggregate award was $20,700. Plaintiff asserts claims including unjust enrichment, quantum meruit, breach of express contract, breach of the implied covenant of good faith and fair dealing, and violation of the New Jersey Prompt Payment of Claims Act.

Removed action in which OON plastic surgeon seeks to collect NSA awards associated with CPT codes 13151 and 15004. Billed charges were $28,389, the payment was $286.22 for CPT 13151, and the aggregate award was $27,600. Plaintiff asserts claims including unjust enrichment, quantum meruit, breach of express contract, breach of the implied covenant of good faith and fair dealing, and violation of the New Jersey Prompt Payment of Claims Act.

Removed action in which OON plastic surgeon seeks to collect NSA awards associated with CPT 19318-50. Billed charges were $194,628, the payment was $1,813.79, and the award was $150,000. Plaintiff asserts claims including unjust enrichment, quantum meruit, breach of express contract, breach of the implied covenant of good faith and fair dealing, and violation of the New Jersey Prompt Payment of Claims Act.

Removed action in which OON plastic surgeon seeks to collect NSA awards related to treatment of five members. The awards were $40,906.25, $33,434.48, $32,156.44, $32,187.17, and $41,175. Plaintiff asserts quantum meruit, unjust enrichment, breach of implied in fact contract, promissory estoppel and violation of California Unfair Business Practice.

Removed action in which OON pediatric surgeon seeks to collect NSA awards associated with CPT 44970. Billed charges were $21,650, the payment was $623.90, and the award was $21,650. Plaintiff asserts claims including unjust enrichment, quantum meruit, breach of express contract, breach of the implied covenant of good faith and fair dealing, and violation of the New Jersey Prompt Payment of Claims Act.

OON plastic surgeon seeks to collect NSA award associated with CPT 13132. Billed charges were $13,600, the claim was denied, and the award was $13,600. Plaintiff asserts confirmation of IDR determination and alternatively, claims for NSA violation, breach of express contract, breach of the implied covenant, third-party beneficiary liability, declaratory relief, quantum meruit, and unjust enrichment.

Removed action in which OON endovascular neurosurgeon seeks to collect NSA awards related to treatment of five members. The awards were $15,000 for CPT 7637; $30,527 for CPT 37252; $18, 347 for CPT 36223-50; $69,2281.80 for CPT codes 36012-50 and 37238-50; and $8,500 for CPT 36227-LT. Plaintiff asserts unjust enrichment, quantum meruit, breach of express contract, breach of implied covenant, declaratory relief, violation of NY Insurance Law, and alternatively, third-party beneficiary liability.

Removed action in which OON endovascular neurosurgeon seeks to collect NSA awards associated with CPT codes 36223-RT, 36225-RT, 36224-LT, 76377, and 36226-LT. Billed charges were $203,900, the claims were denied, and the aggregate award was $188,320. Plaintiff asserts unjust enrichment, quantum meruit, breach of express contract, breach of implied covenant, declaratory relief, violation of NY Insurance Law and alternatively, third-party beneficiary liability.

RECENTLY FILED ACTIONS – ANTITRUST CLAIMS (MULTIPLAN)

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

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

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

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

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

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

OON chiropractic 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.

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

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

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

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

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

OON chiropractic 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.

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

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

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

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

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

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

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

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

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

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

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

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

OON cardiology 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.

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

OON anesthesiology 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.

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

OON women's healthcare 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.

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

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

OON rehabilitation centers assert antitrust claims associated with use of Multiplan pricing tools to determine OON reimbursement rates.

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

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

ADDITIONAL NEWSWORTHY (REGULATORY)

The Department of Health and Human Services' Office of Civil Rights (OCR) and Centers for Medicare and Medicaid Services (CMS) published a notice in the Federal Register on June 2, 2026, informing covered entities that a Federal Court had vacated the sections of the 2024 1557 Rule on Nondiscrimination that interpreted Title IX's definition of sex discrimination to include gender identity discrimination, making the sections legally void, and advising covered entities that OCR and CMS "cannot and will not enforce" those provisions, so long as they remain vacated. 91 Fed. Reg. 32887 (Jun. 2, 2026). The underlying court case is *Tennessee v. Kennedy*, No. 1:24-cv-161-LG-BWR (S.D. Miss., Oct. 22, 2025).

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.

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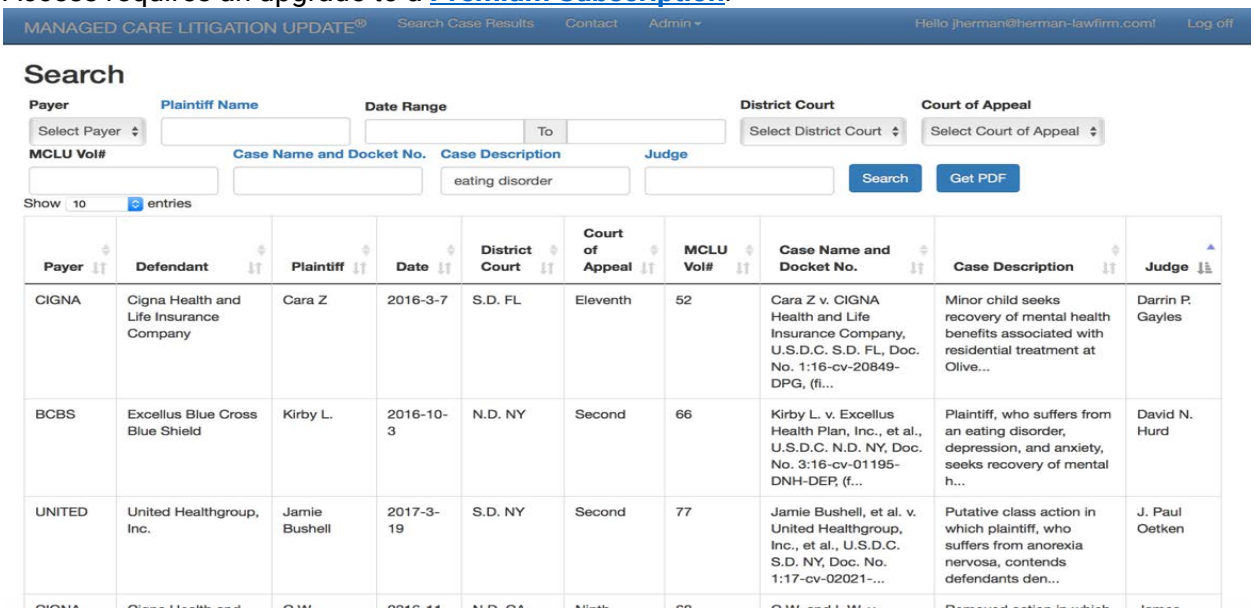

Payer	Defendant	Plaintiff	Date	District Court	Court of Appeal	MCLU Vol#	Case Name and Docket No.	Case Description	Judge
CIGNA	Cigna Health and Life Insurance Company	Cara Z	2016-3-7	S.D. FL	Eleventh	52	Cara Z v. CIGNA Health and Life Insurance Company, U.S.D.C. S.D. FL, Doc. No. 1:16-cv-20849-DPG, (fi...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