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Managed Care Litigation Update™

NEWSWORTHY

Eight Circuit affirms dismissal of putative class action by ERISA member against PBM asserting failure to provide an adequate pharmacy network, reasoning in part that the state network adequacy standards were preempted by ERISA. *Kevin Flowers, et al. v. Caremark PCS Health, LLC, et al.*, USAC 8th Cir., No. 25-3068, — F.4th —, 2026 WL 1859929, (Doc. 5655537, filed Jun. 29, 2026).

Third Circuit affirms summary judgment in favor of ERISA plan, finding that the claims of defamation based on allegedly false assertions in EOBs sent to members regarding the provider's licensure were preempted by ERISA. *Jeffrey M. Ahn, MD v. Cigna Health and Life Insurance Co.*, USAC 3rd Cir., No. 25-1723, — F.4th —, 2026 WL 1813215 (Doc. 36, filed Jun. 24, 2026). Previously reported at *MCLU Vol. 123*.

Ninth Circuit affirms dismissal of putative class action asserting breach of fiduciary duty against ERISA plan where member asserted plan's failure to provide benefits mandated by the No Surprises Act, but the NSA was not in effect on the dates of service. *John Philip Meyer v. Unitedhealthcare Ins. Co.*, USAC 9th Cir., No. 25-3070, 2026 WL 1734988 (Doc. 51, filed Jun. 16, 2026).

RECENTLY FILED ACTIONS

Member seeks $275,000 in ERISA benefits for child's residential mental health treatment at Gateway Academy, LLC from June 17, 2024 to January 16, 2026. Coverage was provided from June 17 through August 12, 2024 and August 16 to October 1, 2024 but denied otherwise as not medically necessary. Plaintiff also alleges violation of MHPAEA.

Removed action in which member seeks ERISA benefits for medical services following a motor vehicle accident. Claims were denied based on coordination of benefits clause.

OON free-standing emergency center and alleged assignee seeks $216,409.14 in benefits and asserts violations of Tex. Ins. Code §§ 1271.155, 1401.0053, 1301.155, and 1467.0575 for alleged failure to pay the UCR.

RECENTLY FILED ACTIONS

Removed action in which State of Massachusetts seeks to recover over $100 million in alleged Medicaid (MassHealth) overpayments arising from Senior Care Organization plan. Plaintiff alleges managed care insurer systematically inflated members' medical severity by falsely asserting mental health conditions (Level 2 instead of Level 1), improperly assigning members to the highest category (Level 3), and exaggerating need for skilled nursing services (Level 3). Plaintiff alleges violations of MA False Claims Act and asserts unjust enrichment and breach of contract.

Payor alleges OON provider's billing firm knowingly submits ineligible disputes to the NSA process, falsely certifies eligibility, inflates billing and payment demands, and manipulates the system to secure excessive payouts. Plaintiff asserts claims including violation of NJ Insurance Fraud Prevention Act, ERISA, and unjust enrichment.

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

Alleged double assignee of claims seeks $818,118.67 from payor and asserts account-stated arising from medical services rendered to members between July 9, 2020 to June 24, 2024 by substance abuse treatment centers.

Removed action in which alleged double assignee of OON emergency claims seeks to collect more than $1.98 million for over 4,000 claims. Plaintiff also asserts claims for violations of Mass. General Laws. c. 176G, § 5(f), Chapter 93A, and MA common law.

Member seeks $75,810 in ERISA benefits for child's residential mental health treatment at Second Nature Therapeutic Program from March 30, 2023 to July 21, 2023. Claim was initially denied for lack of authorization and later as non-covered room and board. Plaintiff also asserts MHPAEA violation.

Member seeks over $67,000 in ERISA benefits for child's residential mental health treatment at Trails Carolina from July 3, 2023 to October 5, 2023. Claim was denied pursuant to an exclusion for “Adventure, Outdoor, or Wilderness Interventions and Camps.” Plaintiffs also allege violations of MHPAEA.

Member seeks more than $100,000 in ERISA benefits for child's residential mental health treatment at Viewpoint Center (June 26, 2022 to August 8, 2022) and Evoke at Entrada (May 8, 2023 to August 4, 2023). Plaintiff asserts underpayment of the Viewpoint claim without adequate explanation, including alleged improper classification as Skilled Nursing Facility. The Evoke claim was initially denied as OON, and then as unpriceable due to use of revenue code 1006, and later for lack of credentials. Plaintiff also asserts MHPAEA violation.

OON air ambulance provider seeks to collect $1,007,158.50 under alleged Single Case Agreements related to thirty-five claims for air ambulance services provided to members between April 5, 2022 and October 15, 2025.

Member seeks over $550,000 in ERISA benefits from a self-funded plan for child's residential mental health treatment at New Haven RTC from July 8, 2024 to May 29, 2025. Claim was initially authorized at an in-network benefit level for fifteen days, then continued at an out-of-network level, and beginning August 20, 2024 was denied for lack of medical necessity based on CALOCUS-CASII criteria. Plaintiffs also allege violations of MHPAEA.

OON rehabilitation facility and alleged assignee seeks ERISA benefits from a self-funded plan and alleges wrongful denials and underpayments based on non-covered service (Codes 001 and 204), reductions exceeding allowable amounts (Code 45), and improper reliance on OON reimbursement (Code 833).

Member seeks over $745,000 in ERISA benefits from successive self-funded plans for child's residential mental health treatment at Elevations Residential Treatment. The first payer denied for lack of medical necessity, and the second payer denied as non-covered, non-emergency OON, and out of state residential care. Plaintiffs also allege violations of MHPAEA.

Vendor contests recoupment and asserts breach of contract where payment processor seeks to recoup funds advanced during down time caused by cyber security incident. Vendor asserts a Temporary Funding Assistance Program was created to assist with the lapse in funding to providers caused by the down time, and that the payment processor is trying to prematurely and improperly set off and recoup funds advanced.

Removed action in which member of Medicare Advantage plan challenges denial of authorization request for a minimally invasive endovascular procedure to treat multilevel arterial occlusive disease. The request was allegedly denied because the aneurysm diameter did not meet clinical guidelines for medical necessity.

RECENTLY FILED ACTIONS – NSA CLAIMS

Removed action in which OON air ambulance provider seeks to collect a $24,693.50 NSA award for emergency air ambulance service provided to member.

Removed action in which endovascular neurosurgeon seeks to collect NSA awards related to treatment of three members. The awards were $7,212 for CPT 49322; $76,400.55 for CPT 59400; and $8,328.68 for CPT codes 99222, 99232, and 99238. Plaintiff asserts unjust enrichment, quantum meruit, breach of express contract, breach of implied covenant, violation of NY Insurance Law and alternatively, third-party beneficiary liability.

OON plastic surgeon seeks to collect NSA awards related to treatment of two members. For Member One, CPT codes 99282 and 13152 were billed at $14,550, the claim was denied, and the award was $14,550. For Member Two, CPT 13132 was billed at $13,600, the claim was denied, and the award was $13,600. Plaintiff asserts confirmation of IDR determination and alternatively, claims for NSA violation, quantum meruit, and unjust enrichment.

Removed action in which orthopedic surgeon seeks to collect NSA awards related to treatment of two members. For Member One, CPT codes 63048 and 22612 were billed at $127,128.67, the payment was $48,136.81, and the aggregate award was $125,877. For Member Two, CPT 22551 was billed at $56,700, the payment was $4,136.81, and the award was $48,195. Plaintiff asserts unjust enrichment, quantum meruit, breach of express contract, breach of implied covenant, violation of NJ Prompt Payment of Claims Act, and alternatively, third-party beneficiary liability.

Removed action in which OON plastic surgeon seeks to collect NSA award associated with CPT 19318-50. Billed charges were $150,000, the payment was $160.14, and the award was $150,000. 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 plastic surgeon seeks to collect NSA awards associated with CPT codes 15771, 15772, 15777 (two counts), 21600 (two counts), and S2068. Billed charges totaled $242,828, the payment was $39,631.81, and the aggregate award was $239,828. Plaintiff asserts unjust enrichment, quantum meruit, breach of express contract, breach of the implied covenant, declaratory relief, violation of New Jersey Prompt Payment of Claims Act, and, alternatively, third-party beneficiary liability.

Removed action in which OON orthopedic surgeon seeks to collect NSA awards related to treatment of six members. The awards were $8,329.20 for CPT codes 23600-RT and 99221; $6,104.87 for CPT 11044-LT; $35,394.44 for CPT codes 27829-RT and 13121-RT; $15,847.47 for CPT codes 13121-RT and 11044-RT; $8,975 for CPT 13121-RT; and $55,836 for CPT codes 27781-LT and 27759-LT. Plaintiff asserts unjust enrichment, quantum meruit, breach of express contract, breach of the implied covenant, declaratory relief, violation of New Jersey Prompt Payment of Claims Act, and, alternatively, third party beneficiary liability.

OON plastic surgeon seeks to collect NSA awards related to treatment of four members. The awards were $13,600 for CPT 13132; $14,000 for CPT 13152; $12,200 for CPT 13131; and $14,000 for CPT 13152. Plaintiff seeks confirmation of IDR determinations and alternatively asserts claims for NSA violation, breach of contract, breach of implied covenant, third- party beneficiary liability, declaratory relief, quantum meruit, and unjust enrichment.

OON spine medicine and surgery practice seeks to collect $571,064.99 in NSA awards for alleged underpayment of 24 medical services claims.

OON spine medicine and surgery practice seeks to collect $165,000 in NSA awards for alleged underpayment of six medical services claims.

Removed action in which OON pain management specialist seeks to collect NSA awards associated with CPT codes 64483-50 and 64484-50. Billed charges were $77,732, the payment was $258.41, and the aggregate award was $75,712.59. Plaintiff asserts unjust enrichment, quantum meruit, breach of express contract, breach of implied covenant, violation of NJ Prompt Payment of Claims Act, and alternatively third-party beneficiary liability.

RECENTLY FILED ACTIONS – ANTITRUST CLAIMS (MULTIPLAN)

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

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

ADDITIONAL NEWSWORTHY (REGULATORY)

California Legislature adopts $8.85 per member per month MCO provider tax, pending federal approval, for calendar years 2027 through 2029, that applies generally to Knox-Keene health plans and not just those that participate in Medicaid. 2026 Cal. Legis. Serv. Ch. 24 (S.B. 125) (West) (filed Jun. 29, 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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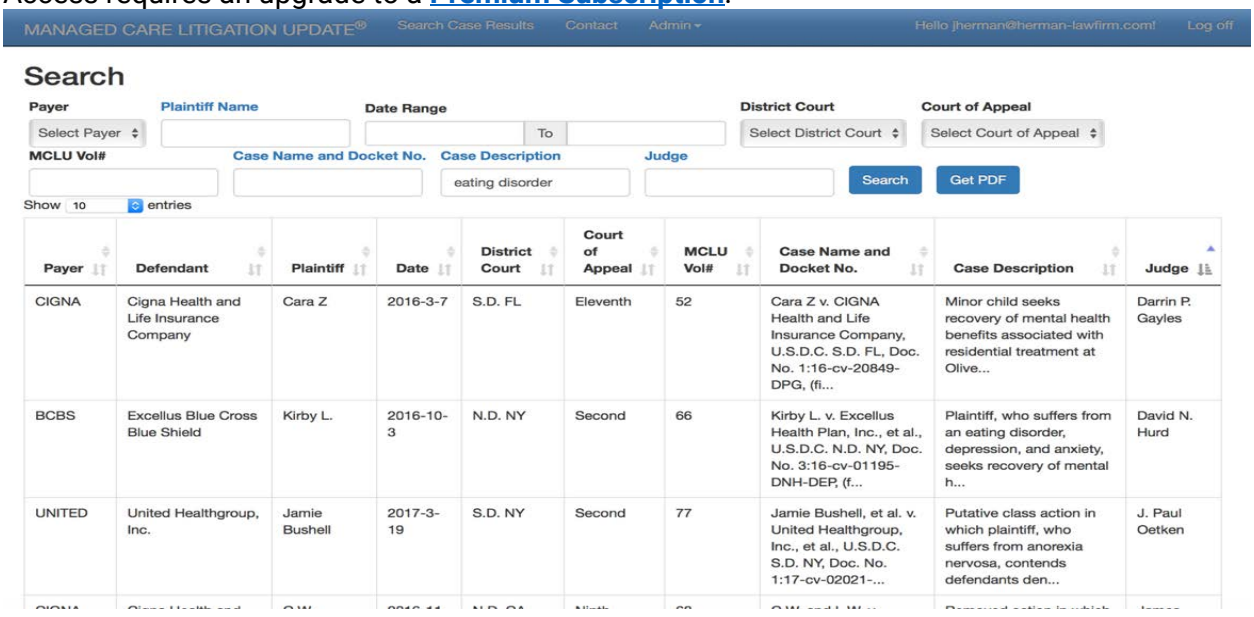

Payer	Defendant	Plaintiff	Date	District Court	Court of Appeal	MCLU Vol#	Case Name and Docket No.	Case Description	Judge
CIGNA	Cigna Health and Life Insurance Company	Cara Z	2016-3-7	S.D. FL	Eleventh	52	Cara Z v. CIGNA Health and Life Insurance Company, U.S.D.C. S.D. FL, Doc. No. 1:16-cv-20849-DPG, (fi...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