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NEWSWORTHY

Fifth Circuit sitting *en banc* confirms the exclusion of single case agreements from calculation of the NSA's Qualifying Payment Amount ("QPA") but reverses and holds in part that non-negotiated "ghost rates" may not be included and that bonus and incentive payments may not be excluded. *Tex. Med. Ass'n. v. United States HHS*, USAC 5th Cir., No. 23-40605, — F.4th —, 2026 WL 2322331, 2026 U.S. App. LEXIS 24326, (Doc. 363, filed Aug. 11, 2026).

District court grants motion for summary judgment to ERISA plan involving a call to verify benefits and during which the plan representative said the reimbursement rate was "80 percent reasonable and customary," concluding that ERISA preempts Plaintiffs' state law claims of breach of contract, unjust enrichment, promissory estoppel, and NY prompt pay violations. *Rowe Plastic Surgery of New Jersey, L.L.C. v. Aetna Life Ins. Co.*, USDC ED NY, No. 2:23-cv-3632-SJB-LKE, 2026 U.S. Dist. LEXIS 181427, (Doc. 24, filed Aug. 13, 2026). Previously reported at *MCLU Vol. 225*.

District court magistrate judge recommends applying anti-assignment provision in dismissing ERISA claim but denying motion to dismiss breach of contract claim predicated on Blue Card Program against home plan. *Methodist Healthcare Sys. of San Antonio, Ltd. LLP v. Blue Cross Blue Shield of Illinois, et al.*, USDC WD TX, No. 5:24-cv-432-FB-RBF, 2026 U.S. Dist. LEXIS 178468, (Doc. 34, filed Aug. 7, 2026). Previously reported at *MCLU Vol. 246*.

RECENTLY FILED ACTIONS

Member seeks ERISA benefits for child's residential mental health treatments at Haven Residential Treatment Center and ROOTS Transition. Claims were denied for lack of medical necessity pursuant to CASII Level 5 criteria. Plaintiff also alleges MHPAEA violations.

Removed action in which member and counsel challenge insurer's subrogation claims totaling \$23,544.69 against member's settlement proceeds and assert the common fund doctrine. Plaintiffs also assert wrongful denial of lumbar disc replacement procedure.

Removed action in which network hospital and alleged assignee seeks \$89,161.46 in benefits for inpatient treatment provided to member from September 1 to 30, 2024 and October 3 to 31, 2024, alleging payer improperly denied the claims due to a coordination of benefits issue related to member's Medicare Part A coverage. Plaintiff asserts breach of contract, unjust enrichment and declaratory relief confirming coverage.

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RECENTLY FILED ACTIONS

Member seeks ERISA benefits for child's residential mental treatment at Mountain Valley Treatment Center and asserts plan failed to provide the claim file despite multiple requests. Plaintiff asserts breach of fiduciary duty and MHPAEA violations.

Removed putative class action in which plan sponsors allege overcharges arising from inflated prescription drug costs, premiums, administrative fees, and stop-loss insurance premiums. Plaintiffs assert that insurer and TPA concealed manufacturer rebates received through PBMs, reported gross rather than net prescription drug costs, and used those inflated figures to calculate charges that financially harmed plan sponsors over multiple years. Plaintiffs assert conversion, unjust enrichment, fraud, fraudulent concealment, breach of fiduciary duty, and violations of the Texas DTPA.

OON rehabilitation provider and alleged assignee seeks \$25,843.83 in ERISA benefits for services rendered between July 13, 2022 and March 16, 2023. Plaintiff asserts wrongful denials and underpayment of claims based on non-coverage, prior adjudication, coding determinations, and OON reimbursement methodology, despite alleged pre-service verification of OON rates.

Member seeks \$301,000 in ERISA benefits from a self-funded plan for child's residential mental health treatment at Triumph Youth Services from December 28, 2023 to April 16, 2025. Claims were denied based for lack of medical necessity and failure to meet the minimum programming requirements. Plaintiffs also assert violation of MHPAEA.

Member seeks \$70,000 in ERISA benefits for child's residential mental health treatment at Deschutes Wilderness from July 10, 2023 to October 16, 2023. The claim was denied on multiple grounds, including lack of coverage of wilderness therapy pursuant to the corporate medical policy and failure to meet the MCG guidelines for residential level of care. Plaintiff also asserts violation of MHPAEA.

Removed action in which alleged double assignee seeks benefits for OON emergency services claims and asserts underpayment. Plaintiff asserts payer systematically reduced reimbursements and profited through a savings program in the administrative service agreement that provided a fee to the TPA for reducing the allowed amounts. Plaintiff asserts unjust enrichment, quantum meruit, and breach of implied-in-fact contract.

Removed action in which member through OON surgeon and alleged attorney-in-fact seeks \$63,768.16 for a craniectomy provided to a member and asserts underpayment. Plaintiff asserts breach of contract and unjust enrichment.

Member seeks \$21,000 in Medicare Advantage benefits for post-surgical inpatient rehabilitation and asserts claim was wrongfully denied for lack of prior authorization.

Removed action in which OON provider and alleged attorney-in-fact seeks \$32,021.13 in ERISA benefits for “lead and anchor revision” and “dorsal column battery change” procedure. Plaintiff asserts underpayment due to alleged improper reimbursement calculations.

OON surgeon and alleged attorney-in-fact seeks \$56,561.03 in ERISA benefits for emergency L5-S1 disc surgery and asserts underpayment. Plaintiff alleges plan improperly switched CPT 63030 to CPT 63047 and denied the primary surgeon's claim as experimental, while assistant surgeon's CPT 63030-82 claim for the same procedure was not denied on that basis.

Member seeks ERISA benefits associated with two periods of residential treatment at Discovery Ranch and asserts violations of MHPAEA. The claims were denied as not medically necessary pursuant to CALOCUS-CASII 20 criteria.

RECENTLY FILED ACTIONS – NSA CLAIMS

OON plastic surgeon seeks to collect NSA awards for treatment of three members. The awards were \$501,576.30 for CPT codes 64912-62 (2 units), S2068-62-LT, S2068-62-RT, 21600-AS-50, S2068-AS-LT, 64912-AS, and 38530-AS-50; \$142,000 for CPT 19371-80-50; and \$513,055.92 for CPT codes 21600-62-50, 21600-AS-50, S2068-62-RT, S2068-AS-RT, S2068-62-LT, S2068-AS-LT, and 38530-62-50. Plaintiff seeks confirmation of IDR determinations and, alternatively, alleges violations of the NSA, breach of contract, breach of implied covenant of good faith and fair dealing, third-party beneficiary liability, quantum meruit, and unjust enrichment.

OON plastic surgeon seeks to collect NSA awards for treatment of six members. The awards were \$320,142 for CPT codes 19370-RT-80, S2068-RT (2 units), 38530-RT, 19328-RT, 32900-RT, 19370-LT, and 35703-LT; \$246,609.13 for CPT codes S2068 and 32900; \$18,200 for CPT codes 35703 and 35703-RT; \$8,211.80 for CPT 32900; \$36,420 for CPT codes 11971-LT and 15002-LT; and \$41,000 for CPT codes 11971-RT and 19380-LT. Plaintiff seeks confirmation of IDR determinations and, alternatively, alleges violations of the NSA, breach of contract, breach of implied covenant of good faith and fair dealing, third-party beneficiary liability, quantum meruit, and unjust enrichment.

OON air ambulance provider seeks \$42,161.52 in ERISA benefits, alleging unpaid NSA awards for emergency air ambulance transport provided to a member.

Removed action in which OON plastic surgeon seeks to collect NSA award related to CPT 19357-RT. Billed charges were \$89,953, the payment was \$718.56, and the award was \$89,953. Plaintiff asserts unjust enrichment, quantum meruit, breach of contract, breach of implied covenant, violation of NJ Prompt Payment Claims Act, and alternatively, third-party beneficiary liability.

Removed action in which OON surgeon seeks to collect NSA awards related to CPT codes 63052-AS, 22638-AS, 63710-AS, 22633-AS, 63709-AS, 22853-AS, 22842-AS, 20937-AS, and 69990-AS. Total billed charges were \$276,499.65, payment for CPT 63052-AS was \$2,719.56, and the aggregate award was \$235,863.32. Plaintiff asserts unjust enrichment, quantum meruit, breach of contract, breach of implied covenant, violation of NJ Prompt Payment Claims Act, and alternatively, third-party beneficiary liability.

Removed action in which OON endovascular stroke specialist seeks recovery of NSA awards related to CPT codes 76377 and 36226-50. Total billed charges were \$88,600, payment for CPT 36226-50 was \$436.28, and the aggregate award was \$78,375. Plaintiff asserts unjust enrichment, quantum meruit, breach of contract, breach of implied covenant, violation of NY Insurance Law § 3224-a, and alternatively, third-party beneficiary liability.

OON plastic surgeon seeks to collect NSA awards related to treatment of eight members. The awards were \$97,650, \$76,422.50, \$18,600, \$41,000, \$33,000, \$90,000, \$104,000, and \$14,500. Plaintiff seeks confirmation of IDR determinations and, alternatively, alleges violations of the NSA, breach of contract, breach of implied covenant of good faith and fair dealing, third-party beneficiary liability, quantum meruit, and unjust enrichment.

Removed action in which OON surgeon seeks to collect NSA award related to CPT 99284. Billed charges were \$7,000, claim was denied, and the award was \$5,250. Plaintiff also asserts quantum meruit and unjust enrichment.

Removed action in which OON plastic surgeon seeks to collect NSA awards related to treatment of four members. For Member One, CPT 49592 was billed at \$24,043, payment was \$178.63, and the award was \$11,500. For Member Two, CPT 19318-RT was billed at \$75,000, payment was \$1,350.06, and the award was \$75,000. For Member Three, CPT 19318-RT was billed at \$75,000, payment was \$1,156.33, and the award was \$75,000. For Member Four, CPT 19318-RT was billed at \$75,000, payment was \$966.04, and the award was \$75,000. Plaintiff asserts unjust enrichment, quantum meruit, and violation of New Jersey Prompt Payment of Claims Act.

Removed action in which OON orthopedic surgeon seeks to collect NSA awards related to treatment of four members. For Member One, CPT codes 26440-XS-F8 (2 units) and 26055-59-F8 were billed at \$37,620, total payment was \$8,269.50, and the aggregate award was \$36,350. For Member Two, CPT codes 64719-LT, 64721-LT-XS, and 26440-XS-F3 were billed at \$68,000, payment was \$449.13, and the aggregate award was \$44,800. For Member Three, CPT 26160-F7 was billed at \$12,200, payment was \$644.47, and the award was \$12,200. For Member Four, CPT codes 64702-XS-FA, 26111-XS, and 26111-XS-FA were billed at \$54,200, payment was \$612.69, and the aggregate award was \$45,450. Plaintiff asserts unjust enrichment, quantum meruit, and violation of New Jersey Prompt Payment of Claims Act.

OON air ambulance provider seeks \$26,606.69 in ERISA benefits alleging unpaid NSA awards for emergency air ambulance transport provided to a member. Plaintiff seeks enforcement of IDR determinations, confirmation of award under FAA and Conn. Arbitration Act, and asserts violation of Conn. Unfair Trade Practices Act.

Removed action in which OON vascular surgeon seeks to collect NSA award related to CPT 46040. The billed charges were \$25,047, payment was \$766.22, and the award was \$14,725. Plaintiff asserts unjust enrichment, quantum meruit, and violation of NJ Prompt Payment of Claims Act.

Removed action in which OON neurosurgeon seeks to collect NSA awards related to treatment of two members. For Member One, 61711-80, 58 was billed at \$92,575, payment was \$2,847.77, and the award was \$92,575. For Member Two, CPT codes 63048 and 63048-59 (2 units) were billed at \$75,000, payment totaled \$25,834.14, and the aggregate award was \$75,000. Plaintiff asserts unjust enrichment, quantum meruit, breach of contract, breach of implied covenant, violation of NJ Prompt Payment of Claims Act, and alternatively, third-party beneficiary liability.

OON provider of intraoperative neurophysiologic monitoring seeks to collect NSA award associated with CPT codes 95941, 95939-26, and 95938-26. Billed charges were \$33,711.25, the amount paid was \$576.65, and the award was \$31,759.25.

OON plastic surgery practice seeks to collect \$608,355.03 pertaining to 11 NSA awards. Plaintiff seeks confirmation pursuant to the NSA and asserts claims including breach of express contract, breach of implied covenant of good faith and fair dealing, and account stated.

Removed action in which OON podiatric surgeon seeks to collect \$317,284.42 in NSA awards pertaining to treatment of 8 members. Plaintiff asserts claims including unjust enrichment, quantum meruit, breach of express contract, third-party beneficiary, and the NJ prompt payment act.

Removed action in which OON surgical assistant practice seeks to collect \$87,781.13 pursuant to an NSA award involving CPT 22830-AS. Plaintiff asserts claims including unjust enrichment, quantum meruit, breach of express contract, third-party beneficiary, and the NJ prompt payment act.

Removed action in which OON orthopedic practice seeks to collect a \$85,361.11 NSA award associated with CPT codes 27428, 29873, and 27429. Plaintiff asserts claims including unjust enrichment, quantum meruit, breach of express contract, third-party beneficiary, and the NJ prompt payment act.

RECENTLY FILED ACTIONS – ANTITRUST CLAIMS (MULTIPLAN)

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

ADDITIONAL NEWSWORTHY (REGULATORY)

CMS issues final rule prohibiting the use of federal Medicaid or CHIP funds for the reimbursement of gender-affirming care to minors. Medicaid Program; Prohibition on Federal Medicaid and Children's Health Insurance Program Funding for Sex-Rejecting Procedures Furnished to Children, 91 Fed. Reg. 52406, (published Aug. 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, (f...	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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