

Managed Care Litigation Update®

NEWSWORTHY

Ninth Circuit affirms summary judgment in favor of state, finding that the Washington Reproductive Parity Act of 2018 and the "thirty-year older conscience statute" do not violate a Church employer's right to religious autonomy or the Free Exercise Clause, in part because the conscience statute enables health carriers to accommodate religious or moral objections to abortion by offering tailored health plans that exclude coverage for abortion services. *Kirkland v. Kuderer, USCA 9 Cir. No. 23-35560, 2026 U.S.App. LEXIS 28083, (Doc. 161, filed Sep. 14, 2026).*

District court grants motion to dismiss where provider sought to collect on 11 prior NSA awards exceeding \$800,000, applying res judicata on the grounds an earlier court found no right of action under the NSA on the same underlying claims, and further finding that the new state law claims must be dismissed because plaintiffs sought to impermissibly create through state law a private enforcement mechanism that Congress did not provide in the NSA. *Savalia v. Anthem Blue Cross Life & Health Ins. Co., USDC CD CA, No. 8:26-cv-736-FWS-KES, 2026 U.S. Dist. LEXIS 202900, (Doc. 28, filed Sep. 3, 2026).* Previously reported at *MCLU Vol. 293*.

District court grants cross motion for summary judgment in favor of member seeking ERISA benefits for residential mental health care, finding that the medical necessity denial of appeal post-remand was arbitrary and capricious because it did not respond directly to the evidence cited in the appeal or cite to any specific medical evidence in the record. *M.Z. v. Blue Cross Blue Shield of Ill., USDC D UT, No. 1:20-cv-184, 2026 WL 2566418, 2026 U.S. Dist. LEXIS 196907, (Doc. 134, filed Aug. 31, 2026).* Previously reported at *MCLU Vol. 167*.

RECENTLY FILED ACTIONS

Member seeks \$67,000 in ERISA benefits from a self-funded plan for child's residential mental health treatment at Evoke Entrada from September 7, 2022 to December 23, 2022. Claims were denied as pursuant to wilderness therapy exclusion. Plaintiffs also assert violation of MHPAEA.

Member seeks ERISA benefits for child's residential mental health treatment at Waterfall Canyon Academy from September 13, 2024 to November 14, 2025. Coverage was initially authorized at OON level, then claims from January 29, 2025 through discharge were denied as not medically necessary. Plaintiff also asserts violation of MHPAEA.

Member seeks \$150,000 in ERISA benefits for child's residential mental health treatment at Visions Treatment Center from March 10, 2021 to May 25, 2021. Claims were denied on grounds of incomplete medical records.

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RECENTLY FILED ACTIONS

Medicare Advantage Organization (MAO) seeks declaratory relief and Medicare Secondary Payer (MSP) Act damages, alleging its MSP reimbursement rights cannot be impaired by Roundup settlement agreements without its consent. Plaintiff alleges that tortfeasors, as primary payers, settled Roundup-related cancer claims, including the 2020 settlements, later settlements covering approximately 77,000 claims, and the proposed 2026 settlement, without ensuring reimbursement of medical expenses Plaintiff paid for Medicare Advantage members. Plaintiff further alleges the 2026 settlement lacks an adequate lien-resolution process and unlawfully limits MAOs' reimbursement rights, and seeks unpaid reimbursement amounts, including statutory double damages.

Emergency physician group and alleged assignee seeks approximately \$1.96 million in alleged unpaid benefits for 1,419 emergency services claims by OON freestanding emergency centers and alleges improper downcoding and nonpayment. Plaintiff asserts equitable estoppel, waiver and inconsistent position, breach of contract and violations of ERISA.

Removed action in which OON spine surgeon seek benefits and asserts underpayment for services provided to seven members involving the primary surgeon fee along with a 20% assistant surgeon fee. Plaintiff alleges breach of contract, breach of implied-in-fact contract, unjust enrichment, and promissory estoppel.

Removed action in which member seeks \$26,272.75 in ERISA benefits for an OON knee reconstruction surgery performed on Sept. 18, 2026 at Millenium Healthcare of Clifton, LLC. The billed charges were \$102,480.46 and the plan paid \$1,166.94 allegedly based on Data iSight methodology. Plaintiff contends the SPD required reimbursement at 175% of CMS absent a Data iSight rate agreement.

Member seeks ERISA benefits, equitable relief and restoration of benefits alleging plan improperly denied and delayed authorization for a cervical MRI. Plaintiff asserts plan relied on "generalized utilization-review criteria rather than conducting an individualized assessment." Plaintiff asserts the denials and delayed approval resulted in progression of his neurological condition.

Acute care hospital systems in-network with Host Plan allege wrongful denials of claims by Home Plan and seek benefits related to treatment of eight members. Plaintiffs assert breach of contract, breach of implied-in-fact contract, quantum meruit, and promissory estoppel.

Removed action in which OON remote neuromonitoring provider seeks \$123,674.54 in alleged underpayments for services rendered from June 6, 2022 to the present. Plaintiff alleges it billed \$132,727 and received \$9,052.46. Plaintiff asserts violation of Fla. Statute § 627.64194.

Member seeks \$400,000 in ERISA benefits for child's residential mental health treatment at Solacium New Haven from September 11, 2025 to July 17, 2025. Coverage was denied as not medically necessary based on CALOCUS-CASII Level 5 criteria. Plaintiff also asserts violation of MHPAEA.

Member seeks ERISA benefits from a self-funded plan for child's residential mental health treatment at Cascade Academy for approximately two months. Claims were initially denied for lack of prior authorization and later denied as not medically necessary on appeal. Plaintiff also asserts violation of MHPAEA.

RECENTLY FILED ACTIONS – NSA CLAIMS

Removed action in which OON surgeon seeks to collect NSA awards for treatment of nine members. The awards were \$18,500 for CPT 49591; \$30,000 for CPT 49650-50; \$20,000 for CPT 49650-50; \$25,500 for CPT 47562; \$8,750 for CPT 47562; \$9,000 for CPT 49594; \$19,550 for CPT 49593; \$24,825 for CPT codes 49650-50 and S2900 (2 units), and; \$2,625 for CPT S2900. Plaintiff asserts unjust enrichment, quantum meruit, breach of contract, breach of implied covenant of good faith and fair dealing, declaratory judgment, account stated, violation of NY Insurance Law § 3224-a, and alternatively, third-party beneficiary.

Removed action in which OON surgeon seeks to collect NSA awards for treatment of three members. For Member One, CPT 22853 was billed at \$43,021, claim was denied, and the award was \$683.33. For Member Two, CPT 27130-82-LT was billed at \$46,342, payment was \$590.09, and the award was \$46,342. For Member Three, CPT 27829-82-RT was billed at \$8,075, payment was \$78.57, and the award was \$6,863.75. Plaintiff asserts unjust enrichment, quantum meruit, breach of contract, breach of implied covenant of good faith and fair dealing, declaratory judgment, account stated, violation of NJ Prompt Payment of Claims Act, and alternatively, third-party beneficiary.

Removed action in which OON surgeon seeks to collect NSA award associated with CPT 24342-RT. The billed charges were \$13,181, payment was \$1,484.89, and the award was \$13,181. Plaintiff asserts unjust enrichment, quantum meruit, breach of contract, breach of implied covenant of good faith and fair dealing, declaratory judgment, account stated, violation of NJ Prompt Payment of Claims Act, and alternatively, third-party beneficiary.

Removed action in which OON orthopedic surgeon seeks to collect NSA award associated with CPT 27447-LT. The billed charges were \$70,955, payment was \$2,332.40, and the award was \$70,995. Plaintiff asserts unjust enrichment, quantum meruit, breach of contract, breach of implied covenant of good faith and fair dealing, declaratory judgment, account stated, violation of NJ Prompt Payment of Claims Act, and alternatively, third-party beneficiary.

Removed action in which OON neurosurgeon seeks to collect NSA award associated with CPT 61645. The billed charges were \$97,000, payment was \$1,248.18, and the award was \$97,000. Plaintiff asserts unjust enrichment, quantum meruit, breach of contract, breach of implied covenant of good faith and fair dealing, declaratory judgment, account stated, violation of NJ Prompt Payment of Claims Act, and alternatively, third-party beneficiary.

Removed action in which OON neurosurgeon seeks to collect NSA awards associated with CPT codes 22551, 20936, and 20930. Total billed charges were \$100,200, payment was \$2,632.66 for CPT 22551, and the aggregate award was \$86,325. Plaintiff asserts breach of contract, breach of implied covenant of good faith and fair dealing, declaratory judgment, account stated, violation of NJ Prompt Payment of Claims Act, and alternatively, unjust enrichment, quantum meruit, and third-party beneficiary.

Removed action in which OON spine surgeon seeks to collect NSA awards for treatment of two members. For Member One, CPT codes 64772-RT (2 units), 22102, and 64727 were billed at \$107,384, total payment was \$1,559.29, and the aggregate award was \$106,726. For Member Two, CPT 64490-50 was billed at \$36,075, payment was \$211.26, and the award was \$36,075. Plaintiff asserts unjust enrichment, quantum meruit, breach of contract, breach of implied covenant of good faith and fair dealing, declaratory judgment, account stated, violation of NJ Prompt Payment of Claims Act, and alternatively, third-party beneficiary.

OON plastic surgeon seeks to collect NSA awards issued in 2025 and 2026 related to 23 claims totaling \$698,000.

Removed action in which OON plastic surgeon seeks to collect NSA awards for treatment of two members. For Member One, CPT 22614 was billed at \$50,200, payment was \$756.13, and the award was \$50,200. For Member Two, CPT 63048 was billed at \$101,908, claim was denied, and the award was \$33,969.38. Plaintiff asserts breach of contract, breach of implied covenant of good faith and fair dealing, declaratory judgment, account stated, violation of NJ Prompt Payment of Claims Act, and alternatively, unjust enrichment, quantum meruit, and third-party beneficiary.

Removed action in which OON neurophysiologist seeks to collect NSA awards for treatment of three members. The awards were \$14,300 for CPT 95940 (12 units); \$30,800 for CPT codes 95940 (15 units), 95938, 95885 (2 units), and 95910; and \$55,200 for CPT codes 95940 (23 units), 95938, 95939, 95885 (2 units), and 95910. Plaintiff asserts unjust enrichment, quantum meruit, breach of contract, breach of implied covenant of good faith and fair dealing, declaratory judgment, account stated, violation of NJ Prompt Payment of Claims Act, and alternatively, third-party beneficiary.

Removed action in which OON neurosurgeon seeks to collect NSA awards for treatment of five members. The awards were \$50,000 for CPT 22551-62; \$6,432 for CPT 27096-RT; \$37,400 for CPT codes 64494-50 and 64495-50; \$155,667.85 for CPT codes 63035-RT-82 and 63030-RT-82; and \$42,000 for CPT 36224-LT. Plaintiff asserts unjust enrichment, quantum meruit, breach of contract, breach of implied covenant of good faith and fair dealing, declaratory judgment, account stated, violation of NJ Prompt Payment of Claims Act, and alternatively, third-party beneficiary.

Removed action in which OON spine surgeon seeks to collect NSA awards for treatment of two members. The aggregate awards were \$135,880 for CPT codes 15830-80, 64488-80, 10121-80, 15771, and 19380-80 and \$12,750 for CPT 64450. Plaintiff asserts unjust enrichment, quantum meruit, breach of contract, breach of implied covenant of good faith and fair dealing, declaratory judgment, account stated, violation of NJ Prompt Payment of Claims Act, and alternatively, third-party beneficiary.

Removed action in which OON spine specialist seeks to collect NSA awards for treatment of four members. The awards were \$17,500 for CPT 62321; \$99,900 for CPT 22856-80; \$25,000 for CPT codes 62323 and 64450; and \$49,000 for CPT codes 64493-LT, 64495-LT, and 64494-LT. Plaintiff asserts unjust enrichment, quantum meruit, breach of contract, breach of implied covenant of good faith and fair dealing, declaratory judgment, account stated, violation of NJ Prompt Payment of Claims Act, and alternatively, third-party beneficiary.

Removed action in which OON surgical oncologist seeks to collect NSA awards for treatment of two members. The awards were \$28,726 for CPT codes 99222 and 44204 and \$62,000 for CPT 47562. Plaintiff asserts unjust enrichment, quantum meruit, breach of contract, breach of implied covenant of good faith and fair dealing, declaratory judgment, account stated, violation of NJ Prompt Payment of Claims Act, and alternatively, third-party beneficiary.

Removed action in which OON surgical oncologist seeks to collect NSA award associated with CPT 49507. The billed charges were \$33,000, payment was \$1,017.22, and the award was \$33,000. Plaintiff asserts unjust enrichment, quantum meruit, declaratory judgment, account stated, and violation of NY Insurance Law § 3224-a.

Removed action in which OON orthopedic spine surgeon seeks to collect NSA award for treatment of two members. For Member One, CPT codes 63045-AS and 63045 were billed at \$62,146.50, total payment was \$5,230.81, and the aggregate award was \$62,146.50. For Member Two, CPT codes 63030-AS-RT, 63030-AS-LT, 63030-LT, and 69990 were billed at \$104,093, total payment was \$5,947.47, and the aggregate award was \$104,093. Plaintiff asserts unjust enrichment, quantum meruit, breach of contract, breach of implied covenant of good faith and fair dealing, declaratory judgment, account stated, violation of NY Insurance Law § 3224-a, and alternatively, third-party beneficiary.

OON plastic surgeon seeks to collect \$243,424 in NSA awards associated with treatment of 11 members. Plaintiff asserts causes of action for confirmation of IDR determinations, violation of the NSA for nonpayment, breach of express contract (click-wrap), breach of implied covenant of good faith and fair dealing, third-party beneficiary, breach of implied contract, account stated, quantum meruit, and unjust enrichment.

OON air ambulance provider seeks to collect \$4,305,061.80 in allegedly overdue NSA awards. Plaintiff sued the insurer, TPA, and affiliated self-insured plans.

RECENTLY FILED ACTIONS – ANTITRUST CLAIMS (MULTIPLAN)

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

OON plastic surgery 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 acupuncture 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 addiction treatment center 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. Plaintiff also asserts violations of State and D.C. Antitrust Statutes.

OON chiropractic practice asserts antitrust claims associated with use of Multiplan pricing tools to determine OON reimbursement rates. Plaintiff also asserts violations of State and D.C. Antitrust Statutes.

OON acupuncture 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 integrated rehabilitation 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 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.

00N multi-specialty physician practice asserts antitrust claims associated with use of Multiplan pricing tools to determine 00N reimbursement rates.

00N aesthetic medicine practice asserts antitrust claims associated with use of Multiplan pricing tools to determine 00N reimbursement rates.

00N healthcare system asserts antitrust claims associated with use of Multiplan pricing tools to determine 00N reimbursement rates.

00N acute care hospital system asserts antitrust claims associated with use of Multiplan pricing tools to determine 00N reimbursement rates.

00N acute care hospital system asserts antitrust claims associated with use of Multiplan pricing tools to determine 00N reimbursement rates.

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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

ADDITIONAL NEWSWORTHY (REGULATORY)

CMS issues sub regulatory guidance extrapolating on the Medical Frailty exclusion for purposes of implementing the OBBBA Community Engagement Medicaid eligibility requirements, providing as an example the ability of a state to use a tiered medical frailty framework. *Implementing Medical Frailty Under Community Engagement (Section 71119 of WFTC Legislation)*, available at www.medicaid.gov/resources-for-states/working-families-tax-cut-legislation/community-engagement/ImplementingMedicalFrailtyDeck.pdf (issued Sep. 8, 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.

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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