

Managed Care Litigation Update®

NEWSWORTHY

Second Circuit affirms district court decision dismissing suit to collect NSA awards, finding the "text and structure of the NSA make clear that it does not provide a private right of action to enforce payment awards obtained through the NSA's IDR process." *E. Coast Advanced Plastic Surgery, LLC v. Cigna Health & Life Ins. Co.*, USCA 2d Cir., No. 25-2204, —F.4th—, 2026 WL 2751786, 2026 U.S. App. LEXIS 28449, (Doc. 80, filed Sep. 17, 2026). Previously reported at *MCLU Vol. 264*.

District court dismisses claims of insurer challenging allegedly ineligible NSA IDR determinations, finding that the eligibility dispute was outside the scope of sections 10(a)(1) and 10(a)(4) of the FAA (as incorporated by the NSA), and therefore the insurer failed to state a claim in alleging over 60% of IDR determinations were on ineligible claims. *Anthem Health Plans of Va. v. Ags Health*, USDC WD VA, No. 7:25-cv-804, 2026 U.S. Dist. LEXIS 223920, (Doc. 97, filed Sep. 30, 2026).

District court grants motion to dismiss of ERISA plan regarding claims for benefits at a residential treatment facility, finding the plan did not violate ERISA or MHPAEA by denying claim for wilderness therapy based on exclusion saying that the "plan does not cover any behavioral modification facilities" and "This includes wilderness programs." *Christopher E. v. Health Care Serv. Corp.*, USDC ND IL, No. 1:24-cv-13175, (Doc. 65, filed Sep. 30, 2026). Previously reported at *MCLU Vol. 255*.

RECENTLY FILED ACTIONS

Removed action in which member and OON medical providers seek ERISA benefits for surgical procedures performed on December 13, 2023. Plaintiffs allege denial of CPT 43775 following authorization, denial of separate and distinct CPT 43281, and underpayment of CPT 47379 resulting from claim processing through Data iSight. Plaintiffs also assert breach of fiduciary duty.

Removed action in which OON mobile wound care and dermatology practice seeks more than \$8,000,000 for alleged underpayment of benefits for emergency medical services provided to members between 2023 to the present. Plaintiff asserts quantum meruit and breach of contract.

OON neurosurgery practice challenges insurer's facility administrative policy "Use of a Nonparticipating Care Provider" on network facilities as unlawful. The policy imposes 7.5% reimbursement penalty for use of out-of-network providers. Plaintiff alleges the policy constitutes anticompetitive and exclusionary conduct that violates Sherman Act, Donnelly Act, NSA, NY laws on tortious interference and deceptive business practices.

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RECENTLY FILED ACTIONS

Removed action in which member seeks recovery of \$21,594.38 in premium payments and asserts insurer denied coverage and refused to reinstate his policy after cancelling it effective August 20, 2024. Plaintiff alleges he historically paid annual premiums averaging \$60,000, made partial premium payment in July 2024, and asserts violation of FL Statute § 772.11.

Removed action in which plastic surgeon seeks \$11,047.53 in alleged underpayments for services provided under a Single Care Agreement executed on October 10, 2025 with an alleged negotiated fee of \$17,562.73. Plaintiff alleges billed charges of \$25,432.60 and payment of \$6,515.20. Plaintiff asserts breach of contract and unjust enrichment.

Adversary proceeding in which Chapter 11 debtor-pharmacy seeks injunctive relief against a PBM for allegedly withholding \$54,013.89 in post-petition reimbursement payments. Plaintiff alleges the PBM improperly suspended reimbursements and withheld receivables based on a disputed audit, claiming a \$842,267.36 overpayment, despite pending administrative appeal and debtor's bankruptcy filing.

Member seeks ERISA benefits from a self-funded plan for child's residential mental health treatment at Elements Wilderness Program and Crossroads Academy. Plaintiff alleges plan denied claims at Elements due to lack of authorization and requested documentation, and it denied claims for treatment at Crossroads for lack of medical necessity under MCG Behavioral Health Guidelines. Plaintiff also asserts violations of MHPAEA.

Removed action in which member challenges subrogation claim of health plan in suit seeking personal injury recovery following motor vehicle collision. Type of policy and basis of challenge are not stated in the underlying complaint.

Member seeks \$320,000 in ERISA benefits for residential mental health treatment of two children. The claims for Child 1 at True North Wilderness Program from September 23, 2023 to December 20, 2023 were denied as OON, and the claims at ROOTs Transition from December 29, 2023 to September 6, 2024 were denied for multiple reasons, including being OON and pursuant to a wilderness therapy exclusion. The claims for Child 2 at True North Wilderness Program from December 6, 2023 to March 20, 2024 were denied as OON without prior authorization. Plaintiffs also assert violations of MHPAEA.

Removed action in which member seeks benefits for an ileostomy pouch revision with lysis of adhesions performed in June 2025 after plan denied coverage twice on the grounds that procedure was being performed by an OON provider. Plaintiff alleges bad faith breach of contract, violations of the Colorado Unfair Claims and Practices Act, and outrageous conduct.

OON hospital seeks declaratory relief requiring payer to submit post-payment Short Stay Billing Validation (SSBV) recoupment determinations to the Medicare Advantage Independent Review Entity (IRE), alleging payer improperly characterized determinations as post-payment "claim payment accuracy" reviews and prevented administrative review of previously paid inpatient claims for Medicare Advantage members treated between April 2024 and October 2025. Payer contends the SSBV determinations are provider-payment determinations, rather than organization determinations and not subject to IRE review under 42 C.F.R. Part 422. Alternatively, plaintiff asserts breach of implied-in-fact contract and seeks \$526,757.48 in allegedly recouped or offset payments.

Member of ERISA plan seeks continuation of 24-hour private duty nursing services that had been authorized since 2023. Continued authorization was denied as "custodial, maintenance, and long-term care" that do not require "the clinical skill and professional training of a registered nurse."

Removed action in which OON provider seeks \$296,874.92 and asserts underpayment of emergency claims in violation of Florida law. The case was removed for claims involving ERISA members.

Putative class action in which member challenges insurer's practice of not crediting manufacturer co-pay assistance to member's deductible. Plaintiff asserts this policy is in violation of Connecticut law that requires credit towards a deductible for any third-party payments towards a prescription drug benefit.

RECENTLY FILED ACTIONS – NSA CLAIMS

Removed action in which OON neurosurgeon seeks to collect NSA awards for treatment of two members. For Member One, CPT codes 22853 and 20936 were billed at \$52,500, claims were denied, and the aggregate award was \$6,145.05. For Member Two, CPT 15734 was billed at \$62,000, claim was denied, and the award was \$62,000. 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.

OON plastic surgeon seeks to collect NSA awards for treatment of two members. For Member One, CPT codes 15002-LT and 38530-RT were billed at \$46,000, total payment was \$1,138.76, and the aggregate award was \$40,270. For Member Two, CPT codes S2068-LT (2 units), 32900-LT (2 units), 38530-RT, and 35216-LT were billed at \$390,000, total payment was \$18,961.38, and the aggregate award was \$379,266.48. Plaintiff asserts confirmation of IDR determinations, and alternatively, violation of NSA, breach of contract, breach of implied covenant of good faith and fair dealing, third-party beneficiary, declaratory judgment, account stated, quantum meruit, and unjust enrichment.

Removed action in which OON orthopedic surgeon seeks to collect NSA award associated with CPT 63042. The billed charges were \$89,420.01, payment was \$1,730.02, and the award was \$67,065. 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, third-party beneficiary, unjust enrichment, quantum meruit, and unjust enrichment.

Removed action in which OON pain management practice seeks to collect NSA awards for treatment of four members. The awards were \$38,867 for CPT codes 64483-RT and 64484-RT; \$34,207 for CPT 64636-LT; \$17,381 for CPT 64484-LT; and \$124,696 for CPT codes 64494-50 and 36475-RT. 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 spine surgeon seeks to collect NSA awards associated with CPT codes 27418-RT and 27425-RT. Total billed charges were \$10,890, both claims were denied, and the aggregate award was \$9,257. 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.

Air ambulance transportation seeks vacatur of \$188,675 NSA award “to allow Petitioner to adjudicate its rights in a separate lawsuit without the threat of the Respondents raising the defense of res judicata.” Plaintiff asserts that it recognizes the petition “does not fall into one of the four categories” within the FAA.

Removed action in which OON anesthesiology practice seeks to collect \$185,057.56 involving three NSA awards. Plaintiff asserts unjust enrichment, quantum meruit, breach of implied-in-fact contract, declaratory judgment, and violations of the Texas Prompt Payment of Claims Act and Texas Insurance Code §§ 41.060 and 542.060.

Removed action in which OON intraoperative monitoring practice seeks to collect \$474,474.68 involving nine NSA awards. Plaintiff asserts unjust enrichment, quantum meruit, breach of implied-in-fact contract, declaratory judgment, and violations of the Texas Prompt Payment of Claims Act and Texas Insurance Code §§ 41.060 and 542.060.

Removed action in which OON intraoperative monitoring practice seeks to collect \$1,580,175.66 involving forty-three NSA awards. Plaintiff asserts unjust enrichment, quantum meruit, breach of implied-in-fact contract, breach of implied covenant of good faith and fair dealing, declaratory judgment, and violations of the Texas Prompt Payment of Claims Act and Texas Insurance Code §§ 41.060 and 542.060.

Removed action in which OON surgeon seeks to collect NSA award associated with CPT 59510. The billed charges were \$99,308.40, claim was denied, and the award was \$99,300. 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 spine surgeon seeks to collect NSA awards related to treatment of two members. For Member One, CPT 47562 was billed at \$52,685.61, payment was \$679.80, and the award was \$50,051.33. For Member Two, CPT codes 47562 and 99284 were billed at \$54,885.61, total payment was \$893.56, and the aggregate award was \$54,885.61. Plaintiff asserts breach of contract, breach of implied covenant of good faith and fair dealing, violation of NJ Prompt Payment of Claims Act, and alternatively, breach of implied-in-fact contract, declaratory judgment, account stated, unjust enrichment, quantum meruit, and third-party beneficiary.

Removed action in which OON spine surgeon seeks to collect NSA awards associated with CPT codes 22552 and 22853. Total billed charges were \$620,000, claims were denied, and the aggregate award was \$559,020. 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, breach of implied-in-fact contract, third-party beneficiary, unjust enrichment, and quantum meruit.

Removed action in which OON neurophysiologist seeks to collect NSA awards related to treatment of two members. For Member One, CPT codes 95939-TC, 95938-TC, 95940 (8 units), and 95861-TC were billed at \$38,910, claims were denied, and the aggregate award was \$38,910. For Member Two, CPT codes 95939-TC, 95940 (10 units), 95938-TC, and 95861 were billed at \$41,112, claims were denied, and the aggregate award was \$41,112. 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 pain management specialist seeks to collect NSA awards associated with CPT codes 63101-AS, 22327-AS, and 63047-AS. The billed charges were \$88,458.14, total payment was \$3,173.79, and the aggregate award was \$85,626.67. 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, third-party beneficiary, breach of implied-in-fact contract, unjust enrichment, and quantum meruit.

Removed action in which OON surgery practice seeks to collect \$438,162.07 in NSA awards. Plaintiff asserts claims including breach of contract (click wrap), breach of implied covenant of good faith and fair dealing, third party beneficiary, breach of implied contract, account stated, and unjust enrichment.

Removed action in which OON surgery practice seeks to collect \$176,332.91 in NSA awards. Plaintiff asserts claims including breach of contract (click wrap), breach of implied covenant of good faith and fair dealing, third party beneficiary, breach of implied contract, account stated, unjust enrichment, and violation of NJ Prompt Payment of Claims Act.

RECENTLY FILED ACTIONS – ANTITRUST CLAIMS (MULTIPLAN)

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

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

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

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

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

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

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

OON substance abuse treatment center for teenagers asserts antitrust claims associated with use of Multiplan pricing tools to determine OON reimbursement rates.

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

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

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

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

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

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

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

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

OON substance abuse and mental health treatment center asserts antitrust claims associated with use of Multiplan pricing tools to determine OON reimbursement rates.

Assignees of OON claims assert antitrust violations 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 urology practice asserts antitrust claims associated with use of Multiplan pricing tools to determine OON 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 temporary moratorium on new registration by agents and brokers to operate within the federally facilitated exchange (FFE) and state-based exchanges that use the federal platform (SBE-FP) for the 2027 PY. Patient Protection and Affordable Care Act; Temporary Moratoria on Certain Agent and Broker Registration to Participate in the Exchanges, 91 Fed. Reg. 60317, (issued Sep. 23, 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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