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Managed Care Litigation Update®

NEWSWORTHY

2nd COA reverses in part dismissal of healthcare provider's claims against out-of-state BCBS plan for alleged underpayment under the BlueCard Program, finding provider's claims for breach of contract and quasi contract may proceed despite the absence of a direct contract between the parties, but affirming dismissal of the provider's 3rd party beneficiary claim. *Northwell Health, Inc. v. Blue Cross Blue Shield Mass., Inc.*, USCA 2d Cir., No. 25-3214, 2026 U.S. App. LEXIS 33279, (Doc. 52, filed Oct. 30, 2026). Previously reported at ***MCLU Vol. 218***.

District court confirms arbitration award in favor of health insurer and denies lab provider's cross-motion to vacate, finding arb. panel acted within its authority under the provider agreement and incorporated arb. rules in awarding attorney's fees and costs as sanctions against lab provider for failing to comply with discovery orders and prosecuting its claims for unpaid services, and that provider received adequate notice and opportunity to respond before sanctions were imposed. *UnitedHealth Grp., Inc. v. Abira Med. Labs.*, LLC, USDC NJ, No. 3:26-cv-7495, 2026 WL 3228330, 2026 U.S. Dist. LEXIS 246820, (Doc. 17, filed Oct. 28, 2026).

District Court grants in part health insurer's motion to dismiss, w/ leave to amend, finding that OON drug rehab. provider failed to state claims for breach of implied contract, PE, QM, and intent'l misrep. based on insurer's verif.of coverage and treatment auth, but sufficiently alleged NM where insurer confirmed patients' coverage before denying payment for failure to satisfy residency requirements for coverage eligibility. *CA Drug Detox v. Harvard Pilgrim Health Care*, USDC CD CA, No. 2:26-cv-6225, 2026 WL 3148230, 2026 U.S. Dist. LEXIS 239928, (Doc. 35, filed Oct. 19, 2026).

RECENTLY FILED ACTIONS

Member, represented by his surgeon, seeks $240,009.81 in ERISA benefits from a self-funded plan for OON inpatient medical procedures arising from colonoscopy and resulting infection, necessitating hospitalization from September 9 to 28, 2020 and October 13 to 26, 2020, and alleges underpayment of claims.

Internal medicine practice and alleged assignee seeks to collect alleged unpaid benefits for COVID-19 tests including BioFire RP2.1 and Qiastat-Dx and related services. Plaintiff alleges improper claim denials, underpayments, failure to adjudicate claims and appeals, and violations of plan terms, the FFCRA, CARES Act, and the CMG IPA Participating-Provider Agreement. Plaintiff asserts ERISA benefits claims, breach of contract for non-ERISA claims, and breach of provider agreement.

Removed action in which member seeks $136,743.78 in benefits for lumbar fusion surgery and related services after exhaustion of PIP benefits. Member contends the health insurer was responsible for coverage under the plan's coordination-of-benefits provisions. Insurer denied preauthorization based on lack of medical necessity and certain grafting components as experimental or investigational. Plaintiff asserts breach of contract, declaratory judgment, and breach of implied covenant of good faith and fair dealing.

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RECENTLY FILED ACTIONS

Removed action in which member seeks $42,303.15 in benefits related to treatment following a motor vehicle accident, alleging the claim was denied for coding error. Plaintiff asserts that instead of correcting the coding error, the hospital filed a lien and frustrated attempts to resolve the plaintiff's personal injury claim. Plaintiff seeks ERISA benefits and asserts breach of contract.

Removed action in which OON neurosurgery practice seeks approximately $620,818.57 and asserts underpayment of emergency medical services provided to member. Plaintiff asserts violation of Fla. Stat. § 641.513 and § 627.64194, breach of contract, and unjust enrichment.

OON air ambulance provider seeks $305,121 in benefits for advanced life support ground ambulance and air transport services from Honduras to Fort Lauderdale, Florida on December 17, 2025. Plaintiff asserts breach of an implied-in-fact contract, and alternatively, unjust enrichment.

Removed action in which OON health system that was both in network and out of network at different times during the claims at issue seeks $999,700 and asserts underpayments. Plaintiff asserts the plan improperly applied a 10% contractual discount to claims when the parties' contract was not in force. Plaintiff further contends failure to honor certain amendments regarding reimbursement. Plaintiff asserts quantum meruit, unjust enrichment, breach of contract, violation of Insurance Law § 3224-a, and declaratory judgment.

Network acute care hospital system seeks approximately $496,067.99 in benefits under the Blue Card Program for alleged underpayments by home plan of medical services provided to three members. Plaintiff asserts breach of contract, breach of implied-in-fact contract, and violations of ERISA.

Hospital that is in network with host plan seeks benefits and asserts underpayments and improper denial of claims by home plan under the "Sister Plan" agreement for medical services provided to members.

Removed action in which administrator of member's estate alleges plan negligently handled utilization review and continuity-of-care obligations during a coverage transition, disrupting the decedent's cancer treatment and causing additional pain and suffering. Plaintiff asserts treatment disruption that resulted in additional out-of-pocket costs.

Member seeks more than $350,000 in ERISA benefits from a self-funded plan for child's residential mental health treatment at Uinta Academy from May 26, 2023 to September 11, 2024. Plaintiff alleges plan initially preauthorized 99 days of treatment under procedure code 90899 (unlisted psychiatric service), but denied coverage on July 11, 2023 due to lack of 24-hour onsite nursing. Plaintiff also asserts MHPAEA violations.

Member seeks ERISA benefits from a self-funded plan for child's residential mental health treatment at Monuments Academy from October 30, 2023 to July 3, 2024. Claims were denied for lack of medical necessity. Plaintiffs also assert MHPAEA violations.

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OON surgeon, through suit on behalf of the member, seeks $25,312.49 in ERISA benefits for an OON plastic surgery for dog-bite injuries. Plaintiff asserts the plan initially paid $914.30 of the $32,975 billed charges based on Medicare reimbursement methodology, later paid the claim in full on appeal, and subsequently claimed an overpayment after reclassifying CPT 13152 as CPT 12013 and limiting the allowable charge to $7,662.51.

Member seeks ERISA benefits from self-funded plan associated with residential treatment at Solstice RTC and asserts violations of MHPAEA. Claim was denied as not medically necessary pursuant to MCG Behavioral Criteria.

Member seeks over $775,000 in ERISA benefits from self-funded plan associated with residential treatment at Change Academy Lake of the Ozarks. Some coverage was provided but the balance was denied and/or recouped on the basis of a maximum benefit. Plaintiff asserts the maximum benefit limit violates MHPAEA.

RECENTLY FILED ACTIONS – NSA CLAIMS

Removed action in which OON neurosurgery practice seeks to collect $65,611.34 in NSA awards from six IDR determinations. Plaintiffs assert unjust enrichment, quantum meruit, violation of Cal. Prompt Pay Law, breach of implied covenant of good faith and fair dealing, insurance bad faith failure to pay, breach of implied-in-fact contract, and declaratory judgment.

OON remote neuromonitoring physicians seek to collect $2,501,372 in alleged unpaid NSA awards. Plaintiffs assert confirmation of IDR determinations, and alternatively, seek enforcement under NSA, confirmation of awards under FAA, recovery of ERISA benefits and equitable relief, and breach of ERISA fiduciary duties.

Removed action in which OON laparoscopic and bariatric surgeon seeks to collect NSA awards for treatment of three members. For Member One, CPT codes 49585 and S2900 were billed at $23,963.25, the claim was denied, and the aggregate award was $17,000. For Member Two, CPT 44970 was billed at $41,926.50, the claim was denied, and the award was $41926.50. For Member Three, CPT 47563-22 was billed at $62,889.71, the claim was denied, and the award was $62,889.71. Plaintiff asserts breach of contract, breach of implied covenant of good faith and fair dealing, declaratory judgment, account stated, quantum meruit, and unjust enrichment.

OON remote neuromonitoring physicians seek to collect approximately $280,856 in allegedly unpaid NSA awards. Plaintiffs seek enforcement under the NSA, confirmation of awards under FAA, and recovery of ERISA benefits and equitable relief.

OON remote neuromonitoring physicians seek to collect approximately $1,468.518 in allegedly unpaid NSA awards. Plaintiffs seek enforcement under the NSA, confirmation of awards under FAA, and recovery of ERISA benefits and equitable relief.

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Removed action in which OON interventional pain management practice seeks to collect NSA awards associated with CPT codes 64483-LT and 2 units of 64484-LT. The billed charges were $150,000, the total payment was $523.53, and the aggregate award was $105,466.66. 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 obstetrics and gynecology practice seeks to collect NSA awards for treatment of eleven members. The awards were $24,000, $35,000, $20,000, $15,000, $40,000, $20,000, $15,000, $7,000, $5,000, $12,000, and $15,000. 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 neurology practice seeks to collect NSA awards for treatment of three members. For Member One, the billed charges were $8,5000 for 5 units of CPT 95941, the payment was $1,486.15, and the award was $8,500. For Member Two, the billed charges were $27,000 for 6 units of CPT 95941, the payment was $1,434.59, and the award was $1,721.51. For Member Three, the billed charges were $13,500 for 3 units of CPT 95941, the payment was $1,161.77, and the award was $1,661.77. 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 and orthopedic practice seeks to collect $243,382.03 associated with 7 NSA awards.

Removed action in which OON orthopedic practice seeks to collect $246,432.73 associated with 9 NSA awards.

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 mental health provider asserts antitrust claims arising from use of Multiplan pricing tools.

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ADDITIONAL NEWSWORTHY (REGULATORY)

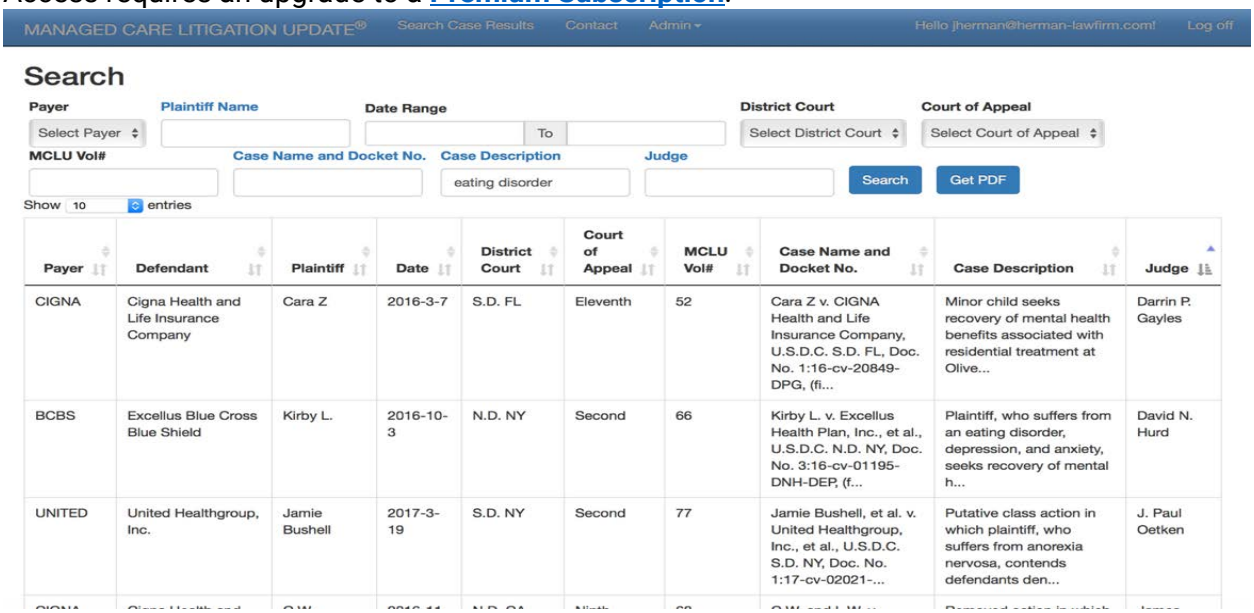
CMS issues proposed rule that would prohibit an Exchange from authorizing the payment of advance payments of the premium tax credit (APTC) and cost-sharing reductions (CSRs) when certain data matching issues (DMIs) are present (e.g., citizenship, residency, income). Payment would be postponed until the DMIs are adjudicated by the Exchange. Patient Protection and Affordable Care Act, Exchange Pre-Eligibility Verification, 91 Fed. Reg. 67656 (published Oct. 27, 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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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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