VOLUME 308B NOVEMBER 15, 2026

Managed Care Litigation Update®

NEWSWORTHY

Ninth Circuit partially reverses dismissal, finding that ERISA does not preempt a negligent misrepresentation claim premised on a phone call to verify benefits in which representations about payment of UCR were allegedly made, though promissory estoppel claims arising from the same fact pattern are preempted. *Healthcare Ally Mgmt. of Cal., LLC v. WSP USA, Inc.*, USCA 9 Cir., No. 0:2024-cv-3479, 186 F.4th 694, (Doc. 47, filed Aug. 11, 2026), *reh'g denied*. Previously reported at ***MCLU Vol. 204***. DISCLOSURE: I am counsel of record.

District court grants dismissal of minor plan beneficiaries' MHPA claims, finding that the plan excluded out-of-network residential treatment without preapproval, beneficiaries failed to plausibly allege how plan could have miscalculated the "maximum payment level" to underpay out-of-network psychological testing, and that purported network disparity in the plan network was too speculative to be plausible. *J.Y. v. Blue Cross Blue Shield of Mich.*, USDC EDMI, No. 2:26-cv-11173-RJW-DRG, 2026 WL 3438159, 2026 U.S. Dist. LEXIS 259206, (Doc. 17, filed Nov. 12, 2026). Previously reported at ***MCLU Vol. 294***.

USBC ND TX dismisses ER providers' action to recover unpaid NSA IDR awards and denied leave to amend, finding that the NSA's administrative enforcement framework controls over the Bankruptcy Code's general turnover remedy and that 11 USCS § 542 cannot be used to obtain judicial enforcement of IDR awards where Congress has not authorized a private enforcement action. *ER of Tex. LLC Colleyville, LLC v. Blue Cross & Blue Shield (In re ER of Tex. LLC)*, USBC ND TX, Case No. 26-40606, Adv. No. 26-04057-MXM, 2026 Bankr. LEXIS 2833 (Doc. 18, filed Nov. 10, 2026). Previously reported at ***MCLU Vol. 297***.

RECENTLY FILED ACTIONS

OON provider group challenges recoupment of $2.6 million and associated suspension of reimbursement of other claims to provider where payor found evidence of waiving patient cost-sharing. Plaintiff asserts only 50 claims were audited yet the findings were inappropriately extrapolated.

Member seeks ERISA benefits associated with bi-monthly Remicade infusion to treat cardiac sarcoidosis. Plaintiff asserts one year of treatments were preapproved but that these preapproved treatments were later denied on the grounds there was no coverage for a specialty medication.

Member seeks ERISA benefits associated with daughter's residential treatment at Cascade Crest Transitions. The claim was denied on the grounds a transitional living facility was not a covered benefit.

Upgrade to a Premium Subscription and receive case caption and court information to the cases discussed in this Basic Subscription version. A Premium Subscription also includes access to the searchable Managed Care Litigation Database®. For more information, visit:
http://www.managedcarelitigationupdate.com/subscription-information/

RECENTLY FILED ACTIONS

Member seeks ERISA benefits associated with seven months of daughter's residential treatment at Cascade Crest Transitions. The claim was denied on the grounds the stay did not meet inpatient criteria.

Network hospital seeks $23.6 million and asserts wrongful denials and underpayments concerning Medicare Advantage plans. Among other complaints, Plaintiff challenges the downcoding of DRG, retrospective denials or recoupments, denials for lack of prior authorization where authorization was not required or possible, and payment of inpatient claims at an outpatient or observation rate.

Removed action in which member asserts breach of insurance contract associated with denial of request for MRI, allegedly delaying appropriate treatment of condition. The request was denied on the grounds other imaging that had been performed was sufficient and that there was no provider directed treatment prior to request for additional imaging.

Member seeks over $300,000 in ERISA benefits from self-funded plan associated with treatment at Telos U, LLC that was initially a partial hospitalization program and later an intensive outpatient program. Coverage was provided from November 2024 through February 11, 2025, but denied thereafter as not medically necessary.

Member seeks over $61,000 in ERISA benefits associated with residential treatment at Evoke at Entrada and Right Direction Crisis Intervention. The claims were denied for multiple reasons, including lack of preapproval and lack of coverage for the type of service.

Plan sponsor asserts breach of fiduciary duties by TPA associated with failure to timely respond in NSA IDR proceedings. Plaintiff also asserts failure to turn over associated claims data and NSA data.

Hospital that is in network with host plan seeks $169,414.47 in reimbursement associated with outpatient surgery admission for overnight observation and asserts breach of contract against host plan. Plaintiff also asserts violations of the Texas Insurance Code.

Member's estate seeks $61,138 in benefits from self-funded ERISA plan associated with proton beam radiation to treat abdominal tumor. Request for authorization was denied on the grounds the treatment was experimental, so plaintiff paid for the treatment out-of-pocket.

Provider seeks benefits from ERISA plan associated with treatment for back injury where some treatment was covered by workers compensation but other treatment was not. Plaintiff seeks recovery of the portion that was not covered. Initial payments by the health plan were recouped.

Removed action in which alleged assignee of network claims from behavioral health facilities asserts failure to pay claims worth $35,778.06.

©JONATHAN M. HERMAN 2014-2026

Removed action in which member seeks $817,302.56 in benefits arising out of accident on an electric bicycle resulting in one month of emergency and inpatient hospital services. The basis of denial or nonpayment is not stated in the underlying complaint.

Member seeks ERISA benefits associated with non-emergency transportation ("NEMT") and residential treatment at Blue Ridge Therapeutic Wilderness and asserts violations of MHPAEA. The Blue Ridge claim was denied as not medically necessary, and the NEMT claim was denied as not covered.

Removed action in which orthopedic practice seeks injunction to prevent its termination from Medicare Advantage Organization's "High Performance Network." Plaintiff asserts it has not been provided any appropriate process and that the termination will affect over 400 patients.

Removed action in which member seeks approximately $60,000 in benefits from ERISA plan for alleged preapproved treatment. Plaintiff asserts the claim was not paid and that plaintiff is being balance billed.

RECENTLY FILED ACTIONS – NSA CLAIMS

Removed action in which OON air ambulance provider seeks to recover $4,186.84 balance from NSA award associated with service code A0436. Plaintiff asserts claims under the NSA, FAA, AZ Arbitration Act, and money had and received.

Removed action in which OON sports medicine practice seeks to recover an $42,799.87 NSA award associated with CPT 24343-80 and 24342-RT. Plaintiff asserts eight state law claims.

Removed action in which OON interoperative neuromonitoring practice seeks to recover an $12,600 NSA award associated with CPT codes 95941-TC, 95938-TC, 95937-TC, 95870-TC, and 95940. Plaintiff asserts eight state law claims.

Removed action in which OON surgical practice seeks to recover $324,258.43 in NSA awards. Plaintiff asserts nine state law claims and claims quantum meruit damages of $427,423.19.

Removed action in which OON pain management practice seeks to recover $208,993.77 in NSA awards. Plaintiff asserts eight state law causes of action.

Removed action in which OON surgical practice seeks to recover $267,613.18 in NSA awards. Plaintiff asserts eight state law causes of action.

OON provider of intraoperative neuromonitoring seeks to collect $138,953 in NSA awards. Plaintiffs assert causes of action for confirmation of awards under the NSA, petition to confirm IDR awards under the FAA, denial of ERISA plan benefits, and other ERISA claims.

©JONATHAN M. HERMAN 2014-2026

Removed action in which OON spinal surgery practice seeks to collect $38,079.24 in IDR awards. Plaintiff asserts various state law claims such as quantum meruit, unjust enrichment, and breach of express wrap contract.

Removed action in which OON neurology practice seeks to collect $297,450.24 in NSA awards. Plaintiff asserts state law claims including breach of click-wrap contract, unjust enrichment, quantum meruit, and violation of New Jersey prompt pay act.

Removed action in which OON plastic surgery practice seeks to collect $196,005.25 in NSA awards. Plaintiff asserts state law claims including breach of click-wrap contract, unjust enrichment, quantum meruit, and violation of New Jersey prompt pay act.

Removed action in which OON plastic surgery practice seeks to collect $25,000 in NSA awards. Plaintiff asserts state law claims including breach of click-wrap contract, unjust enrichment, quantum meruit, and violation of New Jersey prompt pay act.

Removed action in which OON interventional pain management practice seeks to collect $184,570.59 in NSA awards. Plaintiff asserts state law claims including breach of click-wrap contract, unjust enrichment, quantum meruit, and violation of New Jersey prompt pay act.

Removed action in which OON plastic surgery practice seeks to collect $614,658.53 in NSA awards. Plaintiff asserts state law claims including breach of click-wrap contract, unjust enrichment, quantum meruit, and violation of New Jersey prompt pay act.

Removed action in which OON surgeon practice seeks to collect $204,927.30 in NSA awards. Plaintiff asserts state law claims including breach of click-wrap contract, unjust enrichment, quantum meruit, and violation of New Jersey prompt pay act.

Removed action in which OON orthopedic practice seeks to collect $88,424.36 in NSA awards. Plaintiff asserts state law claims including breach of click-wrap contract, unjust enrichment, quantum meruit, and violation of New Jersey prompt pay act.

Removed action in which OON chiropractor practice seeks to collect $79,057.17 in NSA awards. Plaintiff asserts state law claims including breach of click-wrap contract, unjust enrichment, quantum meruit, and violation of New Jersey prompt pay act.

Removed action in which OON vascular surgeon seeks to collect $121,097.48 in NSA awards. Plaintiff asserts state law claims including breach of click-wrap contract, unjust enrichment, quantum meruit, and violation of New Jersey prompt pay act.

Removed action in which OON pain management practice seeks to collect $220,812.84 in NSA awards. Plaintiff asserts state law claims including breach of click-wrap contract, unjust enrichment, quantum meruit, and violation of New Jersey prompt pay act.

Removed action in which OON neurosurgery practice seeks to collect $514,296.73 in NSA awards. Plaintiff asserts state law claims including breach of click-wrap contract, unjust enrichment, quantum meruit, and violation of New Jersey prompt pay act.

Removed action in which OON orthopedic practice seeks to collect $133,426.37 in NSA awards. Plaintiff asserts state law claims including breach of click-wrap contract, unjust enrichment, quantum meruit, and violation of New Jersey prompt pay act.

RECENTLY FILED ACTIONS – ANTITRUST CLAIMS (MULTIPLAN)

OON chiropractor group asserts antitrust claims associated with use of Multiplan repricing tools.

OON chiropractor asserts antitrust claims associated with use of Multiplan repricing tools.

OON chiropractor group asserts antitrust claims associated with use of Multiplan repricing tools.

OON counselor asserts antitrust claims associated with use of Multiplan repricing tools.

OON diagnostic imaging provider asserts antitrust claims associated with use of Multiplan repricing tools.

OON OB/GYN practice asserts antitrust claims associated with use of Multiplan repricing tools.

OON hospital asserts antitrust claims associated with use of Multiplan repricing tools.

OON physical therapy practice asserts antitrust claims associated with use of Multiplan repricing tools.

OON primary care practice asserts antitrust claims associated with use of Multiplan repricing tools.

OON psychiatrist asserts antitrust claims associated with use of Multiplan repricing tools.

OON SUD treatment facility asserts antitrust claims associated with use of Multiplan repricing tools.

OON physical therapy practice asserts antitrust claims associated with use of Multiplan repricing tools.

OON ear specialist asserts antitrust claims associated with use of Multiplan repricing tools.

OON OB/GYN practice asserts antitrust claims associated with use of Multiplan repricing tools.

OON urgent care facilities assert antitrust claims associated with use of Multiplan repricing tools.

OON DME provider asserts antitrust claims associated with use of Multiplan repricing tools.

OON internal medicine practice asserts antitrust claims associated with use of Multiplan repricing tools.

OON pain management practice asserts antitrust claims associated with use of Multiplan repricing tools.

OON pain management practice asserts antitrust claims associated with use of Multiplan repricing tools.

OON internal medicine practice asserts antitrust claims associated with use of Multiplan repricing tools.

OON residential mental health facility asserts antitrust claims associated with use of Multiplan repricing tools.

OON residential mental health facility asserts antitrust claims associated with use of Multiplan repricing tools.

OON mental health provider asserts antitrust claims associated with use of Multiplan repricing tools.

OON residential mental health facility asserts antitrust claims associated with use of Multiplan repricing tools.

OON mental health provider asserts antitrust claims associated with use of Multiplan repricing tools.

OON pain management practice and anesthesia practice assert antitrust claims associated with use of Multiplan repricing tools.

OON physical therapy provider asserts antitrust claims associated with use of Multiplan repricing tools.

OON physician groups assert antitrust claims associated with use of Multiplan repricing tools.

ADDITIONAL NEWSWORTHY (REGULATORY)

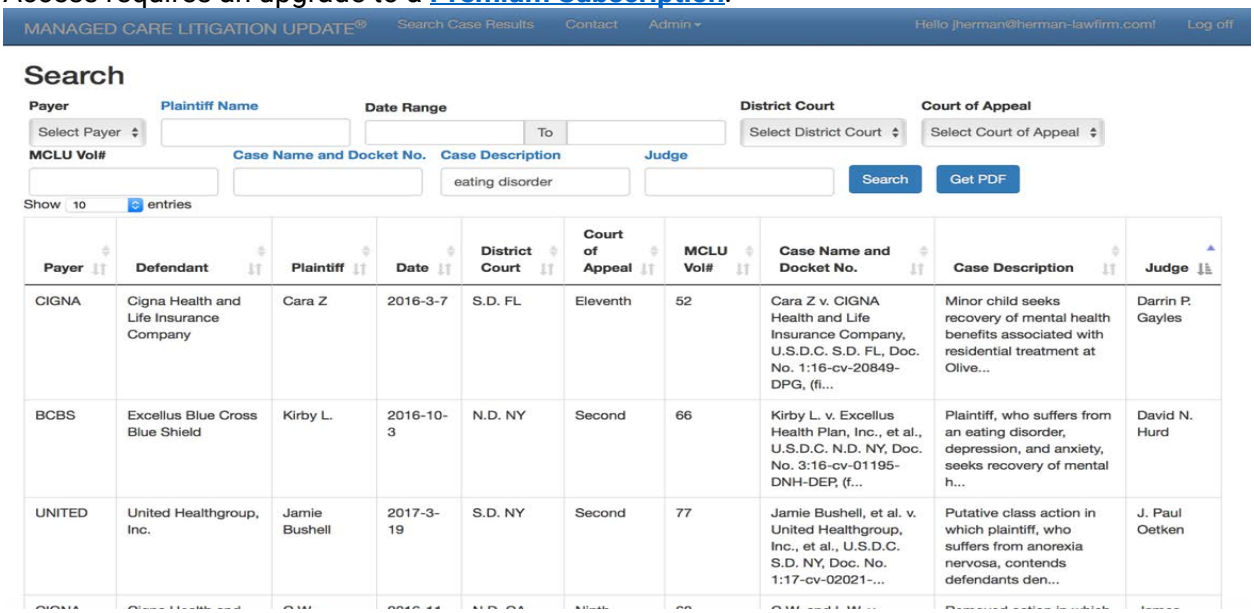
CMS finalizes updates to the 2027 Physician Fee Schedule (PFS) and Medicare Part B payment policies, implementing the Medicare Prescription Drug Inflation Rebate Program under the Inflation Reduction Act of 2022, limits on Medicare coverage for certain individuals, and the Ambulatory Specialty Model. Calendar Year (CY) 2027 Medicare Physician Fee Schedule Final Rule, 91 Fed. Reg. 70992 (published Nov, 9, 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.

Access requires an upgrade to a **Premium Subscription**.



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.

Herman Law Firm

TEXAS • LOUISIANA • MISSISSIPPI • MASSACHUSETTS • CALIFORNIA*

*Licensed in California as Jonathan M. Herman, P.C.

Managed Care Litigation Update is a registered trademark of Jonathan M. Herman, LLC