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# Eighth Circuit Rules Against Third Party Administrator in Cross-Plan Offsetting in Group Health Plans

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On January 15, 2019, the federal Eighth Circuit Court of Appeals issued its decision in *Peterson v. UnitedHealth Group, Inc.,* 913 F.3d, 769 (8th Cir. 2019), in which the Court upheld the federal district court's holding that UnitedHealth Group, Inc. ("United") was not authorized to reduce (or "offset") payments to medical providers under ERISA group health plans for which United was the third-party administrator (or "TPA") by the amounts United determined had been previously *over*paid to the same providers under completely different group health plans also administered by United. This practice is known as "cross-plan offsetting." It arose in the last 20 years as a unilateral, informal overpayment settlement device applied by large insurers and TPAs administering both third-party insured health plans and self-insured health plans.

The court based its decision on its determinations that (i) the group health plans at issue in the case contained no language addressing the offsetting of payments by the amount of overpayment to a provider in another plan and (ii) based on this absence of plan language it was unreasonable for United, as an ERISA plan fiduciary, to interpret the plans to permit this practice. The plaintiffs here were out-of-network medical providers under certain plans whose professional fees or bills had been offset by amounts United had determined were excessive payments by United to those providers in other plans.

United, and other large insurers and TPAs, have in many cases notified existing and/or prospective plan sponsors of the practice of cross-plan offsetting in their administrative services contracts and related communications. Even so, a key issue surrounding this practice is whether *any* such service contract language, or even actual plan language permitting the practice, could ever be upheld, given ERISA's fiduciary duty to act "for the exclusive purpose of...providing benefits to participants and their beneficiaries... ." Those duties, as the Department of Labor argued in a friend-of-the-court brief submitted in the case, can only apply within a *single* plan and cannot be effectively applied or administered and balanced across a group of ERISA health plans that happen to have the same contract fiduciary administrator. By holding back payments to providers in a plan under such an offset mechanism United arguably breaches this duty because, among other reasons, it puts the participants in the plan who incurred the services at financial risk since they could be sued for payment by the provider for the offset amount that arose from an alleged overpayment in a different plan.

Though the court in *Peterson* rejected United's offsetting on the narrow grounds noted above, it specifically noted the possibility of this bigger possible ERISA general fiduciary prohibition of offsetting. We can expect to see more litigation testing this broader ERISA prohibition theory as cases work through the courts based on plan and service contracts language that expressly permit this practice.



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