

Eighth Circuit Affirms that United's Overpayment Recoupment Practices Violate ERISA

Insights

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In a long-awaited ruling issued January 18, 2019, the United States Court of Appeals for the Eighth Circuit affirmed that United's long-established methods for recouping overpayments from healthcare providers are impermissible because they violate the Employee Retirement Income Security Act (ERISA).

For nearly twelve years, United has routinely recouped alleged overpayments from out-of-network providers by offsetting them against other payments due to that provider for unrelated medical services rendered to other patients – a practice known as “cross-plan offsetting.” That practice was recently challenged in a federal district court case in Minnesota. See *Peterson v. UnitedHealth Group, Inc.*, 242 F.Supp.3d 834 (D.Minn. 2017). In *Peterson*, a federal judge ultimately ruled that United's cross-plan offsets were not based on a reasonable interpretation of the language of the ERISA benefit plans administered by United. Recognizing the potential significance of his ruling, however, the judge in *Peterson* then took the unusual step of asking the Court of Appeals to weigh in on the issue even though no final judgment had been issued in the case.

On interlocutory review, the Eighth Circuit agreed with the trial judge. It held that “nothing in the plan documents even comes close to authorizing cross-plan offsetting.” (Slip Opinion at p. 9.) The court also rejected United's primary argument on appeal, which was that cross-plan offsetting was justified because United had been given the discretion to interpret the plan documents. Because no language permitted United to do what it did, there was nothing to interpret. To find otherwise “would undermine plan participants’ and beneficiaries’ ability to rely on plan documents to know what authority administrators do and do not have.”

Interestingly, the Court also observed that the very concept of cross-plan recoupment is “in some tension with the requirements of ERISA,” and while it does not “necessarily violate[] ERISA, at the very least it approaches the line of what is permissible.” It pointed out that United's fiduciary duties run independently to each plan that it administers, so what may be good for one plan may not be good for another.

In light of this ruling, it is clear that all of United's cross-plan offsetting activities are now subject to immediate challenge in court. The legitimacy of similar activities by other healthcare payors is also called directly into question, and will likely be challenged as well.

To learn more about this issue, please contact [Eric Chan](#) at 310.551.8158 or [Katherine Dru](#) at 310.551.8107 in the Los Angeles office, or your regular Hooper, Lundy & Bookman contact.

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