

Does Your TPA Use Cross-Plan Off-Setting? Eighth Circuit Questions Its Compliance with ERISA

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The third-party administrator (TPA) in this case, UnitedHealth Group and its related entities (UnitedHealth), engaged in cross-plan offsetting, which involves not paying a claim under Employer A's group health plan in order to recover an overpayment made by Employer B's group health plan to the same healthcare service provider. For example, assume UnitedHealth overpaid a provider by \$200 on behalf of Employer B's group health plan, and a participant in Employer A's group health plan incurred a \$250 claim with that same provider. UnitedHealth would only pay the provider \$50 on behalf of the participant in Employer A's group health plan. The U.S. Court of Appeals for the Eighth Circuit agreed with the federal district court that UnitedHealth's interpretation of the plans was unreasonable and cross-plan offsetting was not permitted under the plans because (i) interpretations that authorize practices that push the boundaries of what ERISA permits should be viewed with skepticism, (ii) cross-plan offsetting is questionable at the very least under ERISA, and (iii) there was no explicit language in the plans permitting it. The court noted that while we need not decide here whether cross-plan offsetting necessarily violates ERISA, at the very least it approaches the line of what is permissible. Cross-plan offsetting is in tension with [ERISA] fiduciary duty because it arguably amounts to failing to pay a benefit owed to a beneficiary under one plan in order to recover money for the benefit of another plan. While this benefits the latter plan, it may not benefit the former. It also may constitute a transfer of money from one plan to another in violation of ERISA's exclusive purpose requirement. The take-away from this decision is that employers should review their TPA service agreements to determine whether the TPA uses cross-plan offsetting, whether the employer could and/or should opt out of that practice, and whether the TPA provides sufficient indemnification in the event the practice does result in ERISA or other legal claims being brought against the employer. Sponsors of group health plans that engage in cross-plan offsetting should also review whether their plan documents explicitly permit such a practice. [The case is *Peterson v. UnitedHealth Group Inc.*, No. 17-1744 \(8th Cir. Jan. 15, 2019\).](#)