Federal District Court Rules that Cross-Plan Offsetting Violates ERISA

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Cross-plan offsetting is a practice that is used by third-party administrators ("***TPAs***") of employer-sponsored group health plans as a means of recouping a benefit payment that was purportedly overpaid to an out-of-network health care provider under *one plan* by reducing the benefit payment owed to the same provider under *another entirely separate plan*. This practice has raised fiduciary compliance issues under ERISA and has frequently been the subject of litigation. Recently, in *Lutz Surgical Partners, PLLC, et al. v. Aetna, Inc., et al.*¸ a federal district court in New Jersey held that Aetna's use of cross-plan offsetting violated ERISA. Under ERISA, a plan fiduciary may not, "in his individual or in any other capacity act in any transaction involving the plan on behalf of a party (or represent a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries." In addition, ERISA requires plan fiduciaries to prudently carry out their fiduciary duties for the *exclusive purpose* of providing benefits to participants and their beneficiaries.

In *Lutz*, the district court held that by allowing one plan to recover its prior overpayment by reducing the payment of funds under a separate plan, Aetna violated ERISA because it had acted in a transaction involving two parties whose interests were adverse to each other (*i.e.*, the two group health plans). The district court also found that Aetna's use of cross-plan offsetting violated ERISA because Aetna: "discharg[ed] its duty of benefit payment under [one plan], which should be done for the exclusive purpose of serving the interests of [that plan's] participants and beneficiaries." The district court reasoned that, "such an offsetting serves another purpose unrelated to [that plan], *i.e.*, recovering overpayments made under [another plan]." Plan sponsors should review their TPA service agreements to determine whether cross-plan offsetting is addressed and, if so, whether the plan sponsor can opt out of this practice if so desired after considering the attendant risks.

A copy of the court's opinion is available here.

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