

DOL Announces Settlement Relating to TPA's Cross-Plan Offsetting Practice

EBIA Weekly (November 2, 2023)

Settlement Agreement: EmblemHealth, Inc. (Sept. 29, 2023); DOL News Release: DOL Reaches Settlement With New York Insurer, 3rd-Party Health Plan Administrator to End "Cross-Plan Offsetting" Practice (Oct. 5, 2023)

[Settlement Agreement](#)

[News Release](#)

Following an investigation, the DOL has announced a settlement with an insurer that provides services as a third-party administrator (TPA) to employer-sponsored group health plans regarding the practice of cross-plan offsetting, which the DOL asserted was an ERISA fiduciary breach. According to the DOL, to recoup alleged overpayments made to health care providers under employer-sponsored group health plans, the TPA withheld subsequent payments owed to the same providers for expenses incurred by participants in different employer plans—benefiting itself by wrongfully retaining assets from one plan for a debt allegedly owed by another plan. The announcement explains that cross-plan offsetting puts participants at risk of balance billing by out-of-network providers and that the TPA may have wrongfully withheld payments owed directly to participants.

Under the settlement, the TPA agreed to stop engaging in cross-plan offsetting and amend its policies, procedures, and practices no later than January 1, 2024, "or as soon as reasonably practical," and to take retrospective corrective actions dating back to July 16, 2015. By January 1, 2024, the TPA must repay current and former participants and beneficiaries whose reimbursements were reduced due to cross-plan offsetting, and send a form letter by first-class mail and email to all affected participants (generally anyone in an affected plan at any time since July 16, 2015). In addition, the letter is to be posted on any portal used for participant access. Affected individuals have 365 days to request relief. The agreement sets forth detailed processes for the TPA to follow in determining whether an affected participant incurred out-of-pocket costs or was balance billed due to cross-plan offsetting. It also includes a conditional consent order that the DOL may file with a court if the TPA fails to comply with the agreement.

EBIA Comment: The DOL has long taken the position that cross-plan offsetting violates ERISA. Relatively few courts have considered cross-plan offsetting issues, and while at least one did conclude that the practice violates ERISA, other cross-plan offsetting cases have been decided on different grounds. In any event, this company must now expend significant time, effort, and money on the corrective actions required by the settlement agreement. For more information, see EBIA's ERISA Compliance manual at Sections XVI.C.2 ("Exclusive Benefit Rule and Cross-Plan Offsetting") and XXXVII ("DOL Audits and Investigations Under ERISA"). See also EBIA's Self-Insured Health Plans manual at Section XXI.C ("ERISA's Exclusive Benefit Rule").

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