

Publications

January 25, 2024 • Updates

Department of Labor Settles with TPA to End Cross-Plan Offsetting Practice

The U.S. Department of Labor (“DOL”) recently entered into a settlement agreement with a New York-based insurer and third-party administrator (“Company”) of employer group health plans governed by the Employee Retirement Income Security Act (“ERISA”).

According to the DOL, an investigation by its Employee Benefits Security Administration (“EBSA”) found the Company allegedly used cross-plan offsetting to recoup overpayments made to healthcare providers under one or more employment-based health plans. The DOL alleged that the Company simply recouped those overpayments by subsequently withholding other payments owed to those same health-care providers for healthcare expenses incurred by participants covered under other health plans that were sponsored by completely different employers. The DOL alleged this practice violated the Company’s ERISA fiduciary duties as the Company benefitted at the expense of the group health plans and their participants by wrongfully retaining assets from one health plan for a debt allegedly owed by another, different health plan.

The DOL further alleged that the Company’s cross-plan offsetting practice also put participants at risk of being balance billed for wrongfully offset claims.

As a result of the above allegations, the Company and the DOL recently entered into a settlement agreement under which the Company agreed to discontinue cross-plan offsetting with respect to ERISA-covered health plans and make whole all workers and their families who were harmed by its cross-plan offsetting practice. This will involve reimbursing affected persons for out-of-pocket costs, including any fees, penalties, or interest, as appropriate. The Company also has to reasonably determine whether any participants were balanced billed in making them whole.

For More Information on Our TPA and PBM Teams, Along with our Employee Benefits Team

Polsinelli’s TPA and PBM teams provide TPA and PBM licensing services, TPA and PBM regulatory and compliance services, drafting and negotiating of administrative services agreements and a number of other TPA, ERISA, employee benefits and PBM regulatory and business services. Our teams include attorneys who were former in-house counsel for

Related People

- Steven L. Imber
- Henry Talavera
- Justin T. Liby
- Jennifer L. Osborn

Related Capabilities

- Third Party Administrator (TPA) Licensing & Compliance Services
- Employee Benefits & Executive Compensation
- Insurance

TPAs, as well as attorneys who were formerly state insurance and Federal government regulators. By leveraging its extensive experience representing TPAs and PBMs and our experience with respect to ERISA and employee benefits, our TPA and PBM teams in coordination with our Employee Benefits Team, help clients avoid the learning curve and related cost implications that can be experienced by working with companies or attorneys less familiar with the regulatory and compliance needs of TPAs and PBMs and, generally, employee benefit plans and programs. To learn more about our TPA and PBM Licensing and Compliance practices or to contact a member of our TPA and PBM Licensing and Compliance services teams, please visit our [Third Party Administrators](#) page on our website. To learn more about our Employee Benefits Team, please visit our [Employee Benefits & Executive Compensation](#) website.