



UPDATE – UnitedHealthcare’s Overpayment Bulk Recovery Process

This notice is intended to provide you with information on UnitedHealthcare’s Bulk Recovery Process, also referred to as cross-plan offsetting, and some recent enhancements to the program.

We – and others in the industry – have long taken the position that care providers may choose not to participate in carriers’ networks, but that this does not allow them to inappropriately retain prior overpayments caused by issues such as subrogation; coordination of benefits; or fraud, waste and abuse while continuing to collect full cash payments for ongoing services.

This document provides information to help you assess the value of the Bulk Recovery Program and how to opt out of it, if you so choose.

UnitedHealthcare uses this process in order to recover overpayments due from care providers who have refused or neglected to refund plan overpayments, or who request or agree that such overpayments can be recovered through offsets against current or future claim payments. The Bulk Recovery Process both improves our self-insured customers’ cash flow and reduces client plan expenditures by enhancing and accelerating recoveries of outstanding receivables due from providers and getting overpaid amounts back to our customers more efficiently. The Bulk Recovery Process also helps UnitedHealthcare recover overpayments made on behalf of its fully insured plans. Customers are automatically included in the Bulk Recovery Process when the Summary Plan Description (SPD) document includes UnitedHealthcare’s required “Bulk Recovery Plan” language.

Because you may have employees who choose to use out-of-network care providers, we are providing you with additional information about the process and how it benefits you and other self-insured customers, as well as how it benefits UnitedHealthcare, so that you can make an informed decision as to whether your plan will participate. If after reviewing this notice, you elect to not participate in Bulk Recovery, you will need to inform your UnitedHealthcare representative as well as update your Administrative Service Agreement (ASA).

QUESTIONS AND ANSWERS

What is the purpose of the Bulk Recovery Process?

UnitedHealthcare and its affiliate OptumInsight have partnered to develop processes to identify potential overpayments that may have been caused by issues such as subrogation; coordination of benefits; or fraud, waste and abuse. It also identifies overpayments in the regular course of claims processing and review, including overpayments made due to administrative errors, such as duplicate payments resulting from duplicate claims or failure to correct code fragmentation or other incorrect coding by care providers.

Once overpayments are identified, UnitedHealthcare starts by offering medical providers who may have received overpayments the opportunity to dispute and/or voluntarily refund the overpayments. If providers choose not to dispute the overpayments or UnitedHealthcare determines that the providers' disputes are not valid, UnitedHealthcare uses the Bulk Recovery Process to collect the receivables due against current or future payments to the overpaid providers under any plan that UnitedHealthcare administers. The recovered amount is then credited to the plan that overpaid. The Bulk Recovery Process allows UnitedHealthcare plans – both self-insured and fully insured – to efficiently recover overpayments made to providers by clearly identifying the claims being paid and the funds being recovered within a single payment instrument on behalf of all employer groups serviced by UnitedHealthcare.

How does the Bulk Recovery Process work?

UnitedHealthcare pays providers on an aggregated basis, including payments made by multiple UnitedHealthcare-administered plans in a single bulk payment, while identifying the amount paid by each individual plan. The Bulk Recovery Process allows any UnitedHealthcare-administered plan to recover its overpayments to a provider from any of its aggregated payments to that same provider. Plan funds are not commingled in this process.

Aggregated payments are drawn on a UnitedHealthcare bank account, and UnitedHealthcare is later reimbursed by its self-insured plan customers for payments that it made on their behalf. Plans whose claims were paid are only charged for their own claim liability, while plans whose overpayments have been recovered receive refund credits from UnitedHealthcare immediately after the underlying claims have been adjusted. Providers receive a detailed remittance that describes the plans making payment; the service for which each payment relates; and any adjustments or overpayment credits applied to reduce the cash component of the payment to the provider.

For example, the provider may have \$1,000 of receivables in claim payments owed to them and owe \$200 in non-refunded overpayments payable to a plan that is not making a claim payment. In this example, UnitedHealthcare will pay the provider \$800, with the remaining \$200 reallocated to overpayments owed by the provider. This satisfies the net payment due the provider and settles the provider's \$200 overpayment debt.

Is it possible to participate in cross-plan bulk recovery services with network providers only?

Yes, we have now enhanced our program so that you can participate in bulk recovery services solely with network providers. Below are the details regarding what you need to do in order to turn on this functionality based on your current bulk recovery status:

Currently Opted Out of Cross-Plan Bulk Recovery Services

If your plan does not currently include cross-plan bulk recovery services and you would like to elect the Cross-Plan In-Network only option, please reach out to your UnitedHealthcare representative to update your election. As claim recovery will occur only for in-network providers, you are not required to include the cross-plan offset language in your SPD; however as a best practice inclusion of the language is recommended in the event an out-of-network claim payment is subject to the Bulk Recovery Process on an exception basis at your discretion.

Currently Opted Into Cross-Plan Bulk Recovery Services

If you are participating in cross-plan bulk recovery and want to cease out-of-network cross-plan bulk recovery you will need to reach out to your UnitedHealthcare representative to terminate out-of-network cross-plan provider recoveries. Your UnitedHealthcare representative will discuss possible impacts of this decision.

What plan language is needed?

Please reference UnitedHealthcare's required plan language in your SPD. The SPD cross-plan offset recovery language is typically located within the "Claims Procedures" section in three provisions: Payment of Benefits, Form of Payment of Benefits and Refund of Overpayments. Please contact your UnitedHealthcare representative to ensure that these provisions are included in your SPD, as well as the required updates to your ASA if you are electing to not participate.

Are there legal risks associated with the Bulk Recovery Process?

On January 15, 2019, the Eighth Circuit Court of Appeals affirmed an earlier decision from the Minnesota district court (Peterson v. UnitedHealthcare) finding that UnitedHealthcare plans require explicit authorizing language permitting the Bulk Recovery Process. The ruling is limited to certain older UnitedHealthcare plans that were at issue in the litigation. UnitedHealthcare's template plan language has for years included language expressly authorizing bulk recovery through offset, and that language has been adopted by many customers. Those updated plans are unaffected by this ruling. Other plans that continue to wish to participate in cross-plan offsetting may do so under this ruling by adopting the more explicit authorizing language. Failure to adopt the recommended plan language may make it difficult, under this decision, to defend certain recoveries where challenged by providers, and will require UnitedHealthcare to opt the non-conforming plan out of the Bulk Recovery Process.

Even with the additional plan language explicitly authorizing the Bulk Recovery Process, there is a risk that a plan participant whose claim payment to an out-of-network provider was offset may be balance billed by the provider with the provider taking the position that the satisfaction of his debt to an unrelated plan through the offset does not

constitute valid payment for his services. Such balance billing could lead to complaints by impacted individuals. Note that in-network providers are contractually prohibited from member balance billing.

Another risk is that the provider or the balance-billed participant may sue the plan for nonpayment, again taking the position that satisfaction of the provider's debt to an unrelated plan does not constitute valid payment for his services. We believe any such claims would fail on the merits, and UnitedHealthcare will assist with any litigation stemming from the plan's participation in the Bulk Recovery Process. The plan language UnitedHealthcare has provided expressly authorizing the Bulk Recovery Program has been drafted to minimize this risk.

Can medical providers dispute overpayment recoveries?

Yes. Providers are given several opportunities to dispute overpayments. When UnitedHealthcare identifies a potential overpayment, it typically sends the overpaid provider an initial letter identifying the overpayment and requesting a refund. This initial overpayment identification letter informs providers how to request additional information about or contest the identified overpayment if the provider believes the overpayment was misidentified or is otherwise not correct, as well as the timeframe in which such a dispute must be filed.

The overpayment identification letter further informs the provider's office that if it does not contest the overpayment, it may submit the overpaid amount to UnitedHealthcare by check, and that if the provider neither contests the overpayment nor refunds it, UnitedHealthcare will recoup the overpaid amount from the provider by recovering it from a future payment.

Many providers choose the latter method of recovery because it is administratively easier from a practice management perspective than issuing a check. If the provider takes no action, UnitedHealthcare often sends a second letter before placing the overpayment into the Bulk Recovery Process, giving the provider another opportunity to contact UnitedHealthcare to address the overpayment.

In addition to this administrative appeal process for providers, ERISA appeal rights are available to ERISA plan members each time an overpaid claim is adjusted to remove the overpaid amount, and notices are provided to such members at the time of the adjustment. The provider who received the overpayment is similarly given a corresponding Provider Remittance Advice or Provider Explanation of Benefits that identifies the overpayment and explains that with authorization from the patient/ERISA plan member, the provider may prosecute an ERISA appeal contesting the claim adjustment, including through a lawsuit in federal court.

When UnitedHealthcare recovers overpayments using the Bulk Recovery Process, is it failing to pay currently due claims to the providers?

All in-network providers agree to accept UnitedHealthcare's settlement of their identified overpayment debts through offsets as payment in full on currently pending claims. Out-of-network providers also often agree through a variety of mechanisms. Certain out-of-network providers have alleged in lawsuits that in the absence of such an agreement,

an offset amounts to non-payment of currently pending claims. In light of these allegations, the Eighth Circuit noted in its January 2019 decision that payments of benefits to such out-of-network providers through offsets “arguably amounts to failing to pay a benefit owed.”

UnitedHealthcare vigorously disagrees with these providers and maintains that out-of-network providers who have failed to contest identified overpayments cannot reasonably assert that UnitedHealthcare’s cancellation of the associated overpayment debts as part of an aggregated payment fails to afford the providers’ valid consideration. The Eighth Circuit’s January 2019 decision was limited to determining what kind of plan language is required to authorize the Bulk Recovery Process and does not resolve the ongoing dispute concerning whether offsets applied to aggregated payments constitute valid consideration.

How do self-insured plans benefit from the Bulk Recovery Process?

Deducting overpayments from UnitedHealthcare’s aggregated payments to providers allows overpayments to be recovered more quickly and efficiently because it provides individual plans access to a larger pool of outgoing payments from which to recover their overpayments. If a plan elects not to participate in the Bulk Recovery Process, it can recover overpayments made to providers only when those providers choose to make repayment of by offsetting the plan’s own future payments made to those providers.

That means that before a plan can fully recover an overpayment made to a provider where the provider has failed or refused to issue a refund, the plan must wait until it owes that same provider an amount equal to or greater than the original overpayment, substantially delaying a plan’s overpayment recoveries relative to participation in the Bulk Recovery Process. Moreover, if a provider does not thereafter provide services to the same member, or another member, of the same plan, some overpayments may become unrecoverable.

Does UnitedHealthcare benefit from the Bulk Recovery Process?

Yes. Like self-insured plans, UnitedHealthcare benefits, in that plans that it fully insures will also have a larger pool of funds from which to recover their overpayments, allowing for overpayments to be recovered more quickly and efficiently. Because UnitedHealthcare’s fully insured business makes up a large percentage of total claims paid, it will recover more overpayments on an aggregated basis than any individual self-insured plan.

However, UnitedHealthcare serves more self-insured customers than customers with fully insured plans. As a result, in the aggregate, it pays more self-insured claims than it does fully insured claims; and recovers more total self-insured plan overpayments than it does fully insured plan overpayments. In 2019, UnitedHealthcare recovered approximately \$755 million on behalf of self-insured customers, and approximately \$599 million on behalf of fully insured plans, including both refunds and bulk recovery. These recoveries represent 1.4% of the total claims paid for self-insured plans and 1.8% of the total claims paid for fully insured plans, respectively. As of April 30, 2020, with respect to provider overpayments identified and confirmed in 2018, UnitedHealthcare has

successfully recovered 81% of provider overpayments on behalf of self-funded plans that participate in the Bulk Recovery Process and 91% of fully insured plan provider overpayments.

A primary benefit of the Bulk Recovery Process for all plans is improvement of overpayment recovery rates and accelerated recoveries. The precise benefits to any specific plan will depend both on UnitedHealthcare's efficiency in identifying potential provider overpayments from that plan and its efficiency in recovering those overpayments. However, all participating plans will benefit. The Bulk Recovery Process also reduces the administrative cost of recovering provider overpayments.

Does UnitedHealthcare prioritize recovery of overpayments by its fully insured plans?

No. The recovery process is neutral and does not favor the recovery of overpayments made by self-insured or fully insured plans. There are two different types of claim payments, electronic and check. For electronic payments, identified overpayments are recovered on a first-in/first-out basis regardless of funding type, meaning that all overpayments to a provider will be entered into a queue. The overpayments will be recovered in the order in which they were first identified by UnitedHealthcare regardless of whether the overpayment recovery is for a self-insured plan or for a fully insured plan.

For check payments, each provider receives separate aggregated check payments from UnitedHealthcare for all self-insured and for all fully insured claims to be paid to the provider that day. The overpayments are prioritized for collection on the same first-in/first-out basis, but separately for self-insured and fully insured plans. When making self-insured plan payments, UnitedHealthcare first recovers any overpayments owed by that provider to self-insured plans, on a first-in/first-out basis. If that recovery does not reduce the payment to zero, UnitedHealthcare then recovers overpayments made on behalf of fully insured plans to the provider, also on a first-in/first-out basis. Similarly, when a provider receives a fully insured check payment from UnitedHealthcare, it first recovers any overpayments made on behalf of fully insured plans to that provider, on a first-in/first-out basis. If that recovery does not reduce the payment to zero, it then recovers overpayments owed to self-insured plans by the provider, also on a first-in-first-out basis.

Under either the electronic or check payment process, overpayments made by UnitedHealthcare-administered plans may be collected from any payment made to that provider, whether or not the recovered overpayments relate to the members whose claims are included in a given payment.

Will application of overpayment credits be reflected in monthly customer reporting?

Yes. UnitedHealthcare's process provides information to our customers so that they can track the refunds recovered on their behalf. Customers have access to online banking data and are provided with their monthly electronic customer reports (eCRs), which detail the refund credits, including whether the overpayments are recovered through refunds or bulk recovery. The crediting details associated with overpayment recoveries will be identified to each self-insured plan in the monthly "Detailed Report for Transfer

Evaluations” as “Tran Code 0050 Personal Refunds.” UnitedHealthcare reconciles each payment, itemizing both claims payments and recovered overpayments for each plan. This ensures that the appropriate bank accounts are credited and debited after the payment liability is assigned and the overpaid claims that were recouped have been adjusted.

Does UnitedHealthcare charge interest or pay interest on recovered amounts?

No. Timing differences can arise in the processing of claims payments, disbursement of provider checks and recovery of overpayments. For example, a check may be cashed by a provider (triggering funds to be drawn from a self-insured plan’s account) before the claim history has been adjusted and overpayment credits are applied.

Conversely, overpayment credits may be applied before a check is cashed and funds are drawn from the plan’s bank account. As a result, a self-insured plan may receive the benefit of an overpayment recovery before UnitedHealthcare actually receives the funds. In other instances, UnitedHealthcare may receive the refunds before a self-insured plan receives credit for an overpayment recovery. In either case, UnitedHealthcare will not charge the self-insured plan interest, nor pay the plan interest that UnitedHealthcare may earn from the retention of these funds. UnitedHealthcare anticipates that these timing differences will be brief. Any interest retained by UnitedHealthcare is generally earned at the federal funds rate.

Do plans have a choice in whether they participate in the Bulk Recovery Process?

Yes. It is up to each self-insured plan whether or not to participate. The more plans that elect to participate in the process, the larger the pool of funds from which all plans can recover their overpayments will be. All of UnitedHealthcare’s fully insured plans participate in the Bulk Recovery Process. While we believe that the Bulk Recovery Process benefits all plans, individual self-funded plans can opt out of the Bulk Recovery Process by contacting their UnitedHealthcare representatives.