



## **INTRODUCTION**

This notice is intended to provide you with information on UnitedHealthcare's overpayment Bulk Recovery Process.

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.

UnitedHealthcare uses the Bulk Recovery Process to recover overpayments due from providers who have refused to voluntarily refund overpaid amounts. This improves the timely, efficient return of overpayments and reduces outstanding receivables due from providers, which will improve your claims accounting.

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

UHC uses this process in order to recover overpayments due from 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. UHC's 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. UHC's Bulk Recovery Process also helps UHC recover overpayments made on behalf of its fully insured plans. UHC customers are automatically included in the Bulk Recovery Process when the Summary Plan Description document includes UHC's required Bulk Recovery Plan language.

Because you may have employees who may choose to use out-of-network 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 UHC, 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.

## **What is the purpose of the Bulk Recovery Process?**

UHC 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. UHC also identifies overpayments in the regular course of claims processing and review, including overpayments made due to administrative errors such as duplicate payments or due to a failure to correct code fragmentation or other incorrect coding by providers.

Once overpayments are identified, UHC typically offers overpaid medical providers the opportunity to dispute and/or voluntarily refund the overpayment. If the providers choose not to do so, UHC can use the Bulk Recovery Process to collect the receivables due against current or future payments to the overpaid providers under any plan that UHC administers, and then to credit the recovered amount to the plan that overpaid. UHC's Bulk Recovery Process allows UHC 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 UHC.

## **How does the Bulk Recovery Process work?**

UHC pays providers on an aggregated basis, including payments made by multiple UHC-administered plans in a single bulk payment, while identifying the amount paid by each individual plan. The Bulk Recovery Process allows any UHC-administered plan to recover its overpayments to a provider from any of UHC's aggregated payments to that same provider. Plan funds are not co-mingled in this process. Aggregated payments are drawn on a UHC bank account, and UHC 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 UHC 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 \$1000 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, UHC will pay the provider \$800 in cash, and will pay the remainder of the claims by reallocating the \$200 in overpayments owed by the provider to satisfy the net payment due the provider, settling the provider's \$200 overpayment debt.

## **Can medical providers dispute overpayment recoveries?**

Yes. Providers are given several opportunities to dispute an overpayment. When UHC identifies a potential overpayment, it typically sends the overpaid provider an initial letter identifying the overpayment and requesting a refund. UHC's initial overpayment identification letter informs providers how to request additional information about or contest the overpayment identified 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 that if it does not contest the overpayment, it may submit the overpaid amount to UHC by check, and that if the provider neither contests the overpayment nor refunds it, UHC 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, UHC often sends a second letter before placing the overpayment into the Bulk Recovery Process, giving the provider another opportunity to contact UHC to challenge 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 that 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 overpayment determination, including through a lawsuit in federal court.

#### **When United recovers overpayments, does it fail to pay the provider?**

No, although this question is the subject of pending litigation by certain out-of-network providers.

All participating providers agree to accept UHC'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, however, 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."

United vigorously disagrees with these providers, and maintains that out-of-network providers who have failed to contest identified overpayments cannot reasonably assert that UHC'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 did not resolve the ongoing dispute concerning whether offsets applied to aggregated payments constitute valid consideration. United will be presenting the relevant legal arguments concerning valid consideration to the district court on remand, and that litigation may take months or years to resolve.

#### **Are there legal risks associated with the Bulk Recovery process?**

The pending litigation challenging application of United's Bulk Recovery Program to certain out-of-network providers raises the risk that a plan participant whose claim payment to an out-of-network provider was paid by offsetting could 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 those participants. 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 UHC would assist with any litigation stemming from the plan's participation in the Bulk Recovery Process. The plan language UHC has provided expressly authorizing the Bulk Recovery Program has been drafted to further minimize this risk.

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

Deducting overpayments from UHC'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 only recover overpayments made to a provider by offsetting the plan's own future payments made to that provider. 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. Moreover, if a provider does not have another member of the same plan obtain services, some overpayments may become unrecoverable.

### **Does UHC benefit from the Bulk Recovery Process?**

Yes. UHC benefits like self-insured plans, in that plans that UHC 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 UHC's fully insured business makes up a large percentage of total claims paid, UHC will recover more overpayments on an aggregated basis than any individual self-insured plan. However, UHC serves more self-insured customers than customers with fully insured plans. As a result, in the aggregate UHC 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 2018, UHC recovered approximately \$881M on behalf of self-insured customers, and approximately \$405M on behalf of fully insured plans, including both refunds and bulk recovery. These recoveries represent 1.5% of the total claims paid for self-insured plans, and 1.8% of the total claims paid for fully insured plans, respectively. UHC successfully recovered 53% of self-insured plan provider overpayments identified in 2018 compared to 60% of fully insured plan provider overpayments for the same time period.

As noted above, a primary benefit to all plans from the Bulk Recovery Process is improvement of overpayment recovery rates and accelerated recoveries. The precise benefits to any specific plan will depend both on UHC'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 UHC 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 UHC 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 UHC 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, UHC 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, UHC 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 UHC, UHC 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, UHC 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 UHC-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. UHC'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. UHC 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 UHC 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 UHC actually receives the funds. In other instances, UHC

may receive the refunds before a self-insured plan receives credit for an overpayment recovery. In either case, UHC will not charge the self-insured plan interest, nor pay the plan interest that UHC may earn from the retention of these funds. UHC anticipates that these timing differences will be brief. Any interest retained by UHC is generally earned at the federal funds rate.

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

The choice of whether or not to participate lies solely with each self-insured plan. 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 UHC's fully insured plans participate in the Bulk Recovery Process. While UHC believes that the Bulk Recovery Process benefits all plans, individual plans can opt-out of from the Bulk Recovery Process by contacting their UnitedHealthcare representative.

Without the Bulk Recovery Process, UHC would be able to recover a self-insured plan's provider overpayments only from payments due from that same plan to the same provider. As such, it is expected that individual self-insured plan recoveries would be significantly reduced if the ability to Bulk Recover for that particular plan is removed. Opting out of this process would also increase administrative costs for UHC, the opted out plan, and providers. A plan's decision to opt out of the Bulk Recovery Process would prevent recoveries not only from out-of-network providers, but also from contracted providers (who have contractually agreed to bulk recovery and to forego balance-billing members).

### **What Plan language is needed?**

Due to the Eighth Circuit's January 2019 decision, it is required that plans which choose to participate in the Bulk Recovery Process include plan language that clearly authorizes UHC to apply the program on the plan's behalf. Failure to adopt the recommended plan language may result in an inability to defend certain recoveries that may be challenged by providers, and will require UHC to opt non-conforming plans out of the Bulk Recovery Process.

Please reference UHC'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