



Leslie Thomson

Of Counsel
406.896.4638
Billings
lkthomson@hollandhart.com

What To Do – Or Not Do – With The Disability Claims Rules?

Insight — October 11, 2017

Plan sponsors are understandably confused about whether they need to update their disability claims procedures before year-end. In December 2016, the Department of Labor (DOL) issued final regulations that extended the same protections and safeguards applicable to group health benefit claims under the Affordable Care Act to other employee benefit plans that extend benefits based on a determination of disability. The new rules not only affect disability plans, but also other types of welfare benefits (e.g., life insurance with disability waivers), some retirement plans, and even nonqualified deferred compensation plans. Specifically these new regulations require denial notices to contain additional details about the claim review process, include more stringent independence standards, and mandate that benefit denials be provided in non-English languages in certain situations. These rules were scheduled to take effect for disability claims filed on or after January 1, 2018.

Tomorrow the DOL will publish a proposed rule seeking public comments on a proposed 90-day delay of these final regulations. As you may have heard, the Trump Administration issued an order to all agencies earlier this year to review existing regulations and make recommendations to reduce the cost and burden of compliance. Given the objections raised by various stakeholders when the final disability claims procedures were released, the DOL has determined that additional public comment is required. Because additional public comment is necessary, the DOL has also proposed to extend the effective date of the final disability claims procedures by 90 days; however, this delay period could be shorter or longer depending on public comment. If the proposed 90-day delay is finalized, the new disability claims procedures would not be applicable to claims for disability benefits until after April 1, 2018.

At this point, it is unclear what, if any, modifications might be considered to the final rules. Because ERISA-governed plans are already required to include adequate claims procedures, following existing procedures should be sufficient during this interim review. As such, plan sponsors may want to reevaluate making any changes at this time to their employee benefit plans in connection with the final disability claims regulations pending the outcome of the DOL's review. Plan sponsors that have already taken steps to amend and implement the new claims procedures should wait to make further changes until the deadline is actually extended. At that time, we can assist you in analyzing your next steps.

The DOL is taking comments on the proposed 90-day delay until October 27, 2017. After that time, we may have a more definitive time line for

implementation.

For questions on this or other benefits matters, contact a member of Holland & Hart's Benefits Law Group.

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