



Labor Department Boosts Disability Claimant Protections

Insights

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The U.S. Department of Labor (USDOL) recently issued a final rule addressing disability benefit claims and appeals (*see* 81 FR 92316). The rule adds new procedural protections and safeguards meant to ensure disability claimants receive a full and fair review.

What Are The New Requirements?

The final rule imposes additional procedural requirements on those who assist in the provision of disability benefits. When processing claims and appeals, the final rule generally requires the following:

Increased Basic Disclosure Requirements

Benefit claims denial notices must provide a more exhaustive discussion of the grounds for denying a claim, including specific reasons for the denial; specific plan provisions on which the denial is based; the internal rules, guidelines, protocols, standards, or other similar criteria of the plan relied on in denying the claim (or a statement that none were used); the basis for disagreeing with individuals consulted during the claims process, including medical or vocational experts, and disability determinations made by the Social Security Administration; and any additional information necessary to perfect the claim.

If the denial is based on a lack of medical necessity or an exclusion for experimental treatment, the notice must also include an explanation of the scientific or clinical judgment applied (or a statement that such explanation will be provided free of charge upon request). Further, all denial notices must include an explanation of the claims appeals process and a statement that claimants can review and receive copies of all documents free of charge.

Culturally And Linguistically Appropriate Notices

All notices must be written in a culturally and linguistically appropriate manner. Specifically, if a disability claimant resides in a county in which 10 percent or more of the population is literate solely in a particular non-English language, benefit denial notices must include a prominent statement in that language regarding the availability of language services. The plan must also provide a verbal customer assistance process in the non-English language, as well as notices written in that language upon request.

Avoidance Of Conflicts Of Interest

The rule demands the independence and impartiality of all persons involved in the decision-making process, and prohibits employment or compensation decisions based on the likelihood that an individual will deny a benefit claim.

Increased Claimants' Rights

During the review process, disability claimants must be guaranteed the right to present evidence supporting their claim and to respond to any new information prior to the final decision. They must also be given notice and a fair opportunity to respond if benefits are to be denied on appeal based on new evidence or rationales not used to deny the benefit at the claims stage.

Adverse Benefit Determinations

Certain rescissions of coverage, including retroactive terminations due to alleged misrepresentation of fact, are considered "Adverse Benefit Determinations" that trigger the plan's appeals procedures and protections. Rescissions for non-payment of premiums, however, are not characterized as adverse benefit determinations.

Deemed Exhaustion Of Processes

If a plan does not follow all claims processing rules (except those based on a minor error), the claimant's available administrative remedies will be deemed to have been exhausted, and the claimant may immediately file suit against the plan in court, so long as it's filed within the plan's statute of limitations.

How Should We Prepare?

Plans must comply with the new requirements for disability claims submitted on or after January 1, 2018. Before the new requirements take effect, individuals who assist in the provision of disability benefits must understand their new responsibilities for reviewing and rendering disability claim decisions. Failure to follow the new requirements will result in substantial exposure to litigation, as claimants may be permitted to bypass the administrative appeals process and immediately pursue claims in court.

In order to limit your exposure, you may want to consult legal counsel about adding information as to benefit claims limitation periods to all ERISA-covered plans, summary plan descriptions (SPDs), and denial letters. Additionally, plan sponsors and plan administrators must revise plan documents, SPDs, claims forms, denial letters, and related systems to reflect the new requirements prior to the effective date.

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