October 24, 2017

Office of Regulations and Interpretations,
Employee Benefits Security Administration
Room M-5655
U.S. Dept. of Labor
200 Constitution Avenue NW
Washington D.C. 20210

Re: Claims Procedure Regulations for Plans Providing Disability Benefits Examination
RIN No.: 1210-AB39
Regulation: 29 C.F.R. §2560.503-1

Sent Via portal at https://www.regulations.gov/document?D=EBSA-2015-0017-0291

Dear Deputy Assistant Secretary Hauser,

I submit these comments on the proposed regulations for amending the claims procedure regulations applicable to disability benefit plans. I am an attorney who represents individual claimants / plaintiffs in ERISA-governed disability benefit disputes. With fifteen years of experience in ERISA disability insurance claims, I have represented hundreds of individual claimants, and have witnessed the significant inequities they face in the claims process.

The Department's proposed delay of the Final Rule raises concerns of a lack of transparency and fairness in the rule-making process. Prior to finalizing the regulations, there was an extensive 60 day notice and comment period. Numerous comments were submitted from a multitude of stakeholders. A significant percentage of the comments were from insurers and plans, and organizations that represent insurers and plans. A significant theme of the industry comments suggested that there would be a rise in costs if the rules were implemented. However, such comments were largely theoretical in nature and unsupported by any measurable data. Likewise, many of these comments requested increased time to acclimate to the new rules. The Department accommodated these requests by significantly delaying the effective date.

After this lengthy and transparent notice and comment period, the regulations were finalized. However, we are now informed that additional, non-disclosed, information, is being considered by the Department. Certainly, this information could and should have been contributed during the extensive notice and comment period. The ERISA participants (who the regulations are intended to protect) and their representatives have been left out of this process and have no way to respond to this information, since it is being withheld from the public. It is entirely unclear and unexplained why this additional information was not provided during the open and extensive 60 day proper notice and comment period, why this new information holds more weight than the comments submitted during the proper notice and comment period, why

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this additional information is being withheld from the public, and why participants and their representatives are being left out of the process.

It is extremely concerning that the public is only being given a mere 15 day notice and comment period. This effectively strips the public of the ability to obtain necessary information from a FOIA request. The public is being prevented from discovering the information, factors, and stakeholders influencing this process.

What we do know is that after the proper notice and comment process concluded and the regulations were finalized, there were private meetings held with industry representatives. We also know that industry representatives and some members of Congress were sent correspondences regarding this matter. However, the content of the private meetings and of the subsequent correspondences has not been disclosed and is being withheld from the public. Apparently, the industry made reference to a confidential study that is expected to find that the implementation of the final regulations will result in an increase in premiums. It is unclear what data will be utilized in this confidential "study," what methodology or protocol will be followed, or whether any steps will be taken to assess and assure the validity of the confidential "study's" findings. A "confidential" study based on one-sided input from unquestionably financially motivated stakeholders can only result in a complete distrust of the process and findings.

The industry is being permitted to create the study – it will determine the methodology to be followed and collect the data it deems appropriate. Based on the findings of this clandestine study (created and conducted solely by financially conflicted stakeholders) the Department proposes to make an entirely new determination as to the reasonable procedures necessary to protect participants' rights in the disability benefits process. The Industry is being given *carte blanche* to create its own version of the facts, which favor its financial interests over those of the participants, who the regulations are supposed to actually protect. Basic fairness dictates that participants and those that represent participants not be barred from this process. However, this is exactly what is being done. It is impossible for participants to appropriately and effectively comment, validate the industry's findings, or conduct an alternative study, as they are not in possession of the data and if they were, they do not have the requisite resources to process the data.

I highly question the industry's assertion that premiums for group disability benefits would increase by approximately 5-8%. In attempted support of its conclusion, the industry proffers an unreliable and non-analogous example. The industry argued that the premium increases which occurred after Vermont's mental health parity statute was implemented suggest that changes to the rules governing the disability insurance claims process would also yield higher premiums. However, the enhancements to the claims process contained in the Final Rule are simply not as comprehensive as requiring equal coverage for the treatment of mental illnesses as is given to physical illnesses.

That being said, if the enhanced protections of the Final Rule actually resulted in the premium increases suggested, it would certainly be an acceptable price to pay for true coverage.

Even a cursory review of the comments submitted during the proper notice and comment period illustrate the inequities that ERISA participants face in the claims process. Paying lower premiums for illusory coverage does not protect participants.

I request that the effective date of the Final Rule not be delayed. The rationale for the delay lacks transparency and unnecessarily calls into question the fairness and reliability of the process.

Thank you considering my comments,

/s/ Alicia Paulino-Grisham
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