



December 11, 2017

*Submitted electronically via: [www.regulations.gov](http://www.regulations.gov)*

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington DC 20210

**Re: RIN 1210-AB39 – Claims Procedure for Plans Providing Disability Benefits**

Dear Sir or Madam:

The National Business Group on Health is pleased to respond to the Department of Labor's proposed rule regarding claims procedure requirements applicable to ERISA-covered employee benefit plans that provide disability benefits.

The National Business Group on Health represents 416 primarily large employers, including 73 of the Fortune 100, who voluntarily provide group disability and health plan coverage to over 55 million American employees, retirees, and their families. Our members generally provide this coverage through a combination of insured and self-insured arrangements.

As we discussed in our comment letter responding to the Department's April 2015 notice of proposed rulemaking (<https://www.businessgrouphealth.org/pub/?id=C31C4E61-782B-CB6E-2763-B85F65F25037>), we support the Department's efforts to protect plan participants' rights to adequate notice and full and fair reviews of disability claims. However, our members were and remain concerned that many of amendments in the 2016 Final Rule will only increase participant confusion, plan costs, and litigation with little benefit to participants. We therefore welcome the Department's efforts to solicit additional public input and recommend that the Department rescind the 2016 Final Rule.

As detailed in the above-noted comment letter, we urge the Department, as it considers the 2016 Final Rule, to consider the following:

- Our members are at the forefront of developing comprehensive health and productivity strategies designed to improve workforce health and safety, improve and maintain productivity, and remain employers of choice. Our members do not focus narrowly on containing costs by aggressively disputing individual disability

claims, as suggested by the Preamble to the April 2015 notice of proposed rulemaking.

- Employers also must consider the costs of employees' time away from work and replacement costs when an employee is not working due to a disability. Therefore, our members have a substantial incentive to design and administer benefit programs with the aim of improving employees' health, safety, and ability to return to work.
- To further these aims, regulations governing disability claims procedures should maintain plan sponsors' flexibility to establish plan terms and administer benefits accordingly. Minimizing plans' administrative and cost burdens also would permit plan sponsors to devote more resources toward maintaining and improving benefits for their employees.
- Our members devote substantial administrative and financial resources to complying with current claims and appeals procedure requirements and have found that these procedures provide ample opportunity for claimants to review relevant information and pursue appeals. The additional requirements in the 2016 Final Rule would only increase administrative and cost burdens without providing useful information or meaningful protections for participants.

We provide further discussion below.

## **I. Large Disability Plans**

As an initial matter, we encourage the Department to consider the benefit structures of large employers and their disability plans, which often consist of both self-insured and insured coverage. Our members' disability plans generally are part of a carefully designed suite benefits that include but are not limited to the following:

- Short-term disability coverage
- Long-term disability coverage
- Workers' compensation
- Group health coverage
- Leave and paid time off programs
- Return-to-work and stay-at-work programs
- Employee assistance programs
- Health risk assessments
- On-site clinics

Each of these benefits will be tailored to the unique features of the employee population, industry, and line of business, and employers will adapt plan designs over time to meet the needs of their businesses and employees. For example, when designing and budgeting

for disability coverage, large plan sponsors must consider the variation in disability claims and costs by industry:<sup>1</sup>

**TABLE 6: STD METRICS, BY INDUSTRY**

Industry	Average STD Lost Workdays per 100 Covered Employees	Average STD Cost per Covered Employee (\$)	Average STD Claims per 100 Covered Employees
Manufacturing (Auto, Mining & Metal)	458.7	478	9.9
Technology & Telecommunications	363.3	355	7.8
Hospitality & Retail	361.7	240	8.4
Energy, Utilities & Chemicals	342.3	-	11.8
Healthcare	297.4	405	8.9
Financial Services & Insurance	250.2	491	6.9
Pharmaceuticals	249.4	741	6.3
Other	221.2	228	5.7
<b>All-Industry Median</b>	<b>279.4</b>	<b>391</b>	<b>7.5</b>
<b>All-Industry Average</b>	<b>324.5</b>	<b>413</b>	<b>8.1</b>

**TABLE 9: LTD METRICS, BY INDUSTRY**

Industry	Average Annual LTD Claim Incidence per 1,000 Employees	Average LTD Cost per Claim (\$)
Hospitality & Retail	6.03	6,099
Energy, Utilities & Chemicals	5.86	11,338
Healthcare	5.00	15,544
Manufacturing (Auto, Mining & Metal)	4.78	9,895
Technology & Telecommunications	4.01	19,918
Other	3.15	6,681
Financial Services & Insurance	2.43	16,396
Pharmaceuticals	1.83	8,136
<b>All-Industry Median</b>	<b>3.29</b>	<b>6,102</b>
<b>All-Industry Average</b>	<b>4.02</b>	<b>11,376</b>

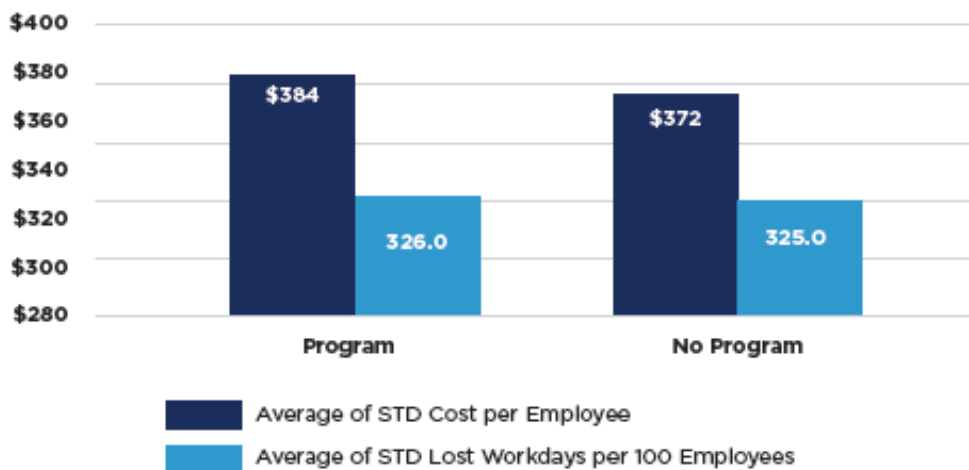
Within this context, there may be little elasticity of demand for *employer-sponsored* disability coverage but substantial elasticity of demand for voluntary supplemental

<sup>1</sup> National Business Group on Health & Truven Health Analytics, *EMPAQ Insights 2016: Harnessing Data to Help Employers Effectively Manage Their Workforce* 14, 18 (2016).

disability coverage among employees.<sup>2</sup> In addition, increases in administrative costs may not decrease demand for employer-sponsored coverage itself but will cause employers to reevaluate disability plan features such as elimination periods, maximum benefit periods, and wage replacement rates. We encourage the Department to consider the effects that administrative and cost burdens have on the design (in addition to availability) of employer-sponsored disability coverage.

Furthermore, employers must balance disability coverage with costs and benefits of related programs such as return-to-work programs and group health coverage.<sup>3</sup>

**FIGURE 14: STD METRICS BY RETURN-TO-WORK PROGRAMS**

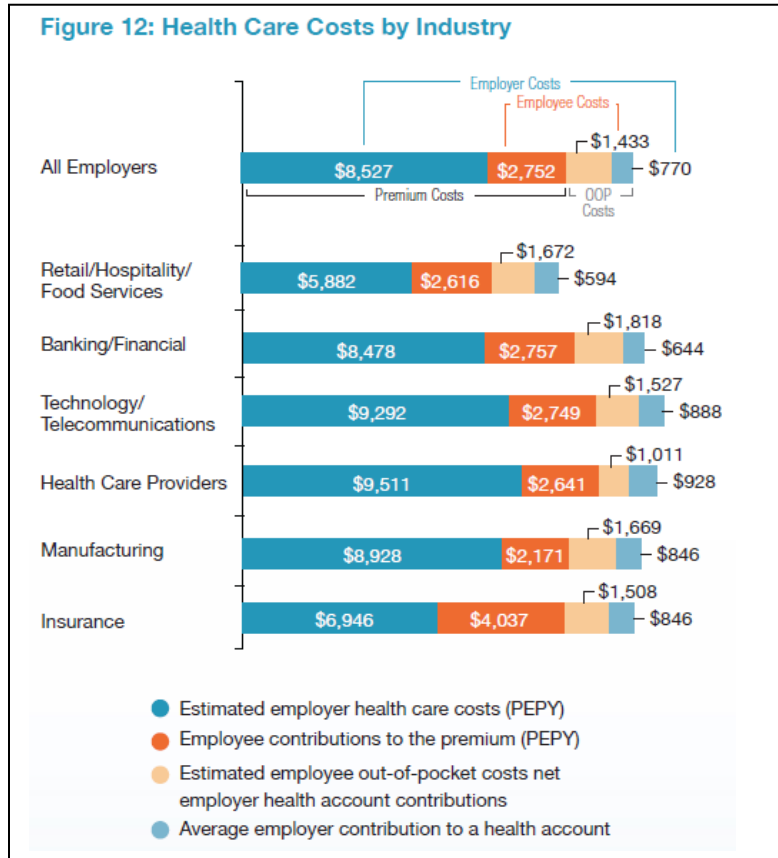


As the health care system becomes more complex and costly for both plan sponsors and participants, there will be an even greater need to minimize compliance costs, including those related to disability coverage. For 2017, our members estimate that health care costs on a per employee per year basis will be \$11,279, approximately \$2,752 of which will be borne by employees. In addition, median annual deductibles for 2017 will be approximately \$1,300 for employee-only coverage and \$3,000 for family coverage. Our members expect overall health care costs to increase by approximately 5% in 2018.<sup>4</sup> These rising costs place ever-increasing pressure on all employer-sponsored benefit plans.

<sup>2</sup> A Bureau of Labor Statistics analysis showed that uptake of long-term disability coverage was significantly lower when plans required employee contributions (77 percent versus 98 percent when plans did not require employee contributions in 2013). Bureau of Labor Statistics, *An Analysis of Private Long-Term Disability Insurance Access, Cost, and Trends* (Mar. 2017), available at <https://www.bls.gov/opub/mlr/2017/article/an-analysis-of-long-term-disability-insurance-access-cost-and-trends.htm>.

<sup>3</sup> National Business Group on Health & Truven Health Analytics, *EMPAQ Insights 2016: Harnessing Data to Help Employers Effectively Manage Their Workforce* 23 (2016).

<sup>4</sup> National Business Group on Health, *2018 Large Employers' Health Care Strategy and Plan Design Survey* 7, 10 (2017).



In this environment, rising administrative and cost burdens for disability plans will result in fewer resources being available for coverage and other benefits for employees.

## II. 2016 Final Rule

*The 2016 Final Rule is unlikely to provide useful information or meaningful protections for plan participants.*

We also urge the Department to weigh the 2016 Final Rule’s administrative and cost burdens against the fact that the rule is unlikely to provide meaningful information, protections, or additional disability coverage for plan participants. As detailed in our 2016 comment letter (<https://www.businessgrouphealth.org/pub/?id=C31C4E61-782B-CB6E-2763-B85F65F25037>), the rule:

- Would not provide useful information to plan participants regarding the definition of “disability” or participants’ benefits under the terms of the plan at issue;

- Would likely result in claimants receive large amounts of additional information that is confusing and not helpful in evaluating claims—with additional risks involved with handling and delivering sensitive medical information; and
- Would likely increase time and costs involved with litigation without providing a more full or fair claim review.

### **III. Effective Date for Amended Regulations**

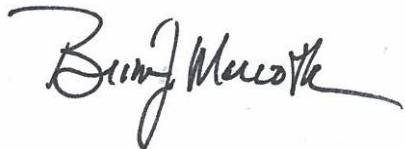
Finally, we recommend that the Department delay the applicability of any amended disability claims procedures. For plan sponsors, amending claims and appeals procedures to conform with any amendments to the 2016 Final Rule will require time to:

- Amend relevant plan documents, policies, and procedures;
- Train benefits personnel on the new policies and procedures;
- Coordinate and potentially amend agreements with third-party administrators and carriers; and
- Communicate plan amendments to plan participants.

We therefore we recommend delaying the effective date to the first day of the first plan year beginning 12 months after the issuance of any amended final regulations.

Thank you for considering our comments and recommendations. Please contact me or Debbie Harrison, the National Business Group on Health's Assistant Director of Public Policy, at (202) 558-3004 if you would like to discuss our comments in more detail.

Sincerely,

A handwritten signature in black ink that reads "Brian Marcotte". The signature is written in a cursive style with a long, sweeping tail on the letter "t".

Brian Marcotte  
President