



December 11, 2017

Submitted Electronically

Office of Regulations and Interpretations
Employee Benefits Security Administration, Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington DC 20210
Attention: Claims Procedure for Plans Providing Disability Benefits Examination

Subject: Claims Procedure for Plans Providing Disability Benefits; Extension of Applicability Date (RIN 1210-AB39)

Dear Sir/Madam:

On behalf of ReedGroup, I am pleased to submit the following comments regarding the impact of the Department of Labor's ("Department") January 17, 2017 Final Rule amending the claims procedure requirements applicable to ERISA-covered employee benefits plans that provide disability income benefits ("Final Rule"). ReedGroup, a wholly owned subsidiary of The Guardian Life Insurance Company of America[®], is a recognized leader in helping organizations reduce the cost, compliance risk, and complexity of employee absence. For over 30 years, we have provided products and services to build a better health-productivity balance for both our clients and their employees in the pursuit of returning employees to their full activity, and keeping businesses thriving with a skilled workforce.

ReedGroup's products and services address the Family and Medical Leave Act ("FMLA"), the Americans with Disabilities Act, state and municipal leave laws, workers' compensation, and short- and long-term disability programs. ReedGroup is a third-party administrator ("TPA") for self-funded, ERISA-governed disability programs. It is through this perspective that we respectfully submit comments to the Department with regard to the Final Rule.

We appreciate the Department's decision to grant a 90-day delay of the applicability date of the Final Rule while it reviews new disability insurance claims data to inform a more robust regulatory impact analysis. Upon the Department's likely conclusion that the newly-solicited claims data supports our assertion that the regulation will harm employers, claimants, and the broader disability insurance marketplace, we encourage swift action to meaningfully further delay the applicability date of the Final Rule while the Department completes its work to rescind or revise the regulation. To the extent the Final Rule is not rescinded, we would encourage the Department to consider several improvements to the most troubling elements of the regulation, which this letter details below.

While we administer self-insured disability plans, ReedGroup generally associates itself with the findings of the survey the American Council of Life Insurers ("ACLI") will submit in response to the Department's request for new claims information on the broader disability insurance market impact. ACLI's findings

show that the Final Rule will limit the availability of disability insurance coverage, increase costs to consumers, and consequently negatively impact the demand of employer-provided disability insurance.

Impact from § 2560.503–1(h)(4), requirement to provide claimant with new information or additional evidence and the opportunity to respond

The Final Rule requires that a plan administrator must provide the claimant any new information or evidence during the appeal of an adverse benefit determination. ReedGroup expects that this will likely harm the claimant by delaying claims administration and causing a postponement in payment of benefits, and create an expensive, time-consuming process for the plan administrator. Consider the following:

- The process required under Section (h)(4) creates confusion as to obligations and time frames for which the parties must supply and respond to information during the appeal process. Allowing the claimant a “reasonable opportunity to respond” creates a potentially endless cycle of the exchange of new information for the plan administrator and claimant, and does not provide guidance for a final and binding decision making process. For example, the Final Rule lacks clarity whether, which each response to new information, the plan administrator is permitted to obtain another independent medical exam or third-party review which might be required to resolve any outstanding issues. ReedGroup estimates that this open-ended burden will likely result in an extended claims administration process and determination; and therefore, potential delayed receipt of benefits.

Moreover, given the time frame for resolving these disputes it is likely that these issues could frequently remain unresolved when the administrator is required to make its final determination. Because of these issues, and similar issues with respect to subsection (h)(4)(ii), ReedGroup respectfully requests that the Department rescind subsection (h)(4) in its entirety.

Further, the plan administrator must ensure that the secure delivery of new information to the claimant complies with federal and state privacy laws. Claimant access to secure e-delivery of such information is limited, and therefore, will likely result in costly transmission of secure data via overnight mail, which will in turn likely reduce the plan-funding. ReedGroup estimates \$10,000 in additional mailing costs annually, and an approximate \$20,000-\$30,000 technology enhancement of our secure portal.

- Claimants, medical providers, employers, and TPAs fare better with exact time frames to respond to deadlines, including the ability to grant an extension where warranted. Even appropriately tailored timelines permitting stakeholders to exchange and respond to new information will lengthen the claims determination and appeals process. If subsection (h)(4)(i) remains in the final rule, ReedGroup recommends the below timeline improvements:
 - Plan administrators should be required to provide new information to claimants within ten business days of the administrator’s receipt of the information;
 - Claimants must provide his or her response within 20 business days of the date of the administrator transmission of new or additional information.

Additionally, the administrator should be provided a reasonable period to review the information provided by the claimant, and that the deadline for its decision be tolled during the

review. Similarly, if the administrator provides a new rationale for denying the claim to the claimant, the same process for exchanging information and resolving the claim should be reflected in subsection (h)(4)(ii).

Impact from § 2560.503–1(J)(7) and (o), providing adverse determinations and written notices in a culturally or linguistically appropriate manner

ReedGroup expects that the requirement to provide adverse benefit decisions and requested written notices in a culturally or linguistically appropriate manner will be onerous, time-consuming, expensive, and may result in delayed benefits to claimants. Written translation services can be logistically cumbersome for disability plans to implement due to the specialized nature of the vendors, and a myriad of privacy considerations. An adverse determination letter is individualized to a claimant's specific circumstance, and typically contains medical information.

Requiring the translation of such a letter into various languages is outside the scope of a plan administrator's usual and customary business, and would be an inefficient use of human resources to ensure the proficiency of personnel in various languages. The added requirement for TPAs to ensure third-party translation service vendors are compliant with state privacy laws given the transmission of claimant personal and medical information will be an added burden. Additionally, the written translation of individual notifications can take up to 30 days or more when using a translation service, which could result in the further delay the claims determination process.

Finally, adherence to the regulation as enacted would create an additional administrative step by requiring a TPA to continually stay apprised of changing demographics in counties to determine whether ten percent or more of that local population is literate in the same non-English language. As demographics and language trends shift, ReedGroup would be required to continually commission new translations of plan information and notification templates, as well as spending capital on software development and updating our claims management software systems. Currently, ReedGroup provides an oral translation line for claimants successfully, and we propose that plan administrators only be required to continue to provide this service under a revised final rulemaking.

Thank you for providing ReedGroup with the opportunity to comment. If I can provide any further assistance, please contact me.

Respectfully Submitted,



Megan Holstein, Esq.

Vice President of Compliance