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VIA CERTIFIED MAIL

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

Dear Deputy Assistant Secretary Hauser,

As attorneys representing claimants with disabilities, and further to our firm's prior submission, we write on behalf of ERISA disability claim beneficiaries, to share our concerns about the Department's proposed delay in implementation of regulations.

The Department's proposed delay of the final regulations raises serious issues regarding transparency in the rule-making process. It should not be understated that the Department finalized rules after an extensive notice and comment period which provided 60 days and yielded comments from various stakeholders. Insurers and plans, and the organizations that represent them, came out, as expected, in force. Many industry comments urged that there were cost issues associated with implementing the rules. Those comments were highly speculative and rarely were supported by any relevant data. As well, many industry comments asked for more time to adjust to the new rules, a request that the Department honored by significantly delaying the effective date.

Now we are told that other input is being relied upon at this late date - information that could have been contributed during the proper notice and comment period but somehow was not. Ironic to the circumstances faced by ERISA claimants that our firm interacts with on a daily basis, and the unfair process which they are subjected to (and for which the proposed final regulations will help such claimants), the ERISA participants and their representatives have no way to respond to this input, since it is not being made available.



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The public is not being told why this post notice and comment information is more valuable than what was submitted, collected and received during the notice and comment period itself. It is clear that there were meetings with insurance industry representatives and that the insurance industry and certain members of Congress sent letters, but the content of these meetings and letters are not entirely disclosed. The insurance industry apparently referenced a "confidential" study that unsurprisingly predicts an increase in premiums. It is likewise curious that the very short 15-day notice and comment period does not even provide time for an individual to make a FOIA request to uncover what is influencing this process. Again ironic to the process faced by ERISA claimants, it appears the deck is stacked, and once again, in favor of the insurance industry.

Moreover, the industry study that the Department is now proposing seems to allow for this process to recede even further into the shadows. The industry will collect data in a way that will be hidden from the public, and based upon such "data", the Department proposes to alter its decision on protecting participants' rights, and in providing reasonable procedures in the adjudication of the disability benefits.

How this can be fair defies explanation, other than one based upon pure cynicism, as it clearly is at the peril of disabled and vulnerable claimants, to the benefit of well-heeled insurance companies and Corporate America. Indeed, it seems designed to permit an entirely unscientific massaging of facts to favor one set of interests over another. There is no way that participants can effectively comment or provide their own "study," since they are not in possession of the "data" and could not muster the resources to process it, even if they were.

We do not assume that the industry is correct in estimating that premiums for group disability benefits would increase by 5-8%. But to the extent that premiums would be increased to avoid illusory coverage, ERISA participants would likely welcome this and it would present no additional burden to public programs.

If the difference in premiums is the difference between paying something for nothing and paying something for something, the argument surrounding the increase rings hollow. To the extent the Department thinks a delay is needed to prevent such an increase, this needs to be reconsidered, as the costs will not outweigh the benefits even in the worst-case scenario.

We ask that the effective date of the regulations not be delayed, since the reason for doing so lacks the necessary transparency and undermines the sense of trust and fairness that should inhere in this rule-making process.



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We also request that more transparency be afforded, such that the public be able to appreciate the data which may be relied upon in any fashion by the Department in formulating any determination as to implementation of further regulations. Once again, given that this impacts ERISA, such materials would be considered "relevant" under the governing regulations, and should thus be made available,

Thank you considering our comments,

Very truly yours,

FRANKEL & NEWFIELD, P.C.

A handwritten signature in cursive script, appearing to read 'Newfield', is written over a horizontal line.

By: Jason Newfield, Esq.
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JAN/bms