

Turner, Jeffrey - EBSA

From: Kreps, Michael
Sent: Thursday, July 13, 2017 1:23 PM
To: Canary, Joe - EBSA; Turner, Jeffrey - EBSA
Subject: Disability Claims - Meeting Follow-up

Joe and Jeff –

We appreciate you and your colleagues taking time on June 12th to meet with members of the coalition of carriers, employers, and disability plans (the “Coalition”) to discuss the disability claims regulation (the “Regulation”). At that meeting, we discussed the Coalition’s assessment that the Regulation will increase costs significantly more than what was estimated in the Department’s regulatory impact analysis. Because of those cost increases, employers may reduce and/or eliminate altogether disability income coverage for their employees, and some individuals may elect to drop or forego coverage, with the aggregate result being that fewer people will have adequate income protection in the event of disability. Below, we provide some additional information and data points that may be helpful, and we request that the Department issue guidance as soon as possible delaying the Regulation’s January 1, 2018 effective date while the Department solicits and reviews relevant data and considers changes to the Regulation.

The disconnect between the Department’s estimate of the impact of the Regulation and the actual costs may be due, in large part, to the fact that the Department lacked a substantial amount of relevant data. Specifically, the Department stated that it did not have complete or sufficient data with respect to the:

- Number of plans providing disability benefits (81 Fed. Reg. at 92333);
- Number of participants covered by plans providing disability benefits (81 Fed. Reg. at 92333);
- How often plans rely on new or additional evidence or rationale during the appeals process (81 Fed. Reg. at 92334);
- Volume of materials that comprise the new evidence or rationale (81 Fed. Reg. at 92334);
- Amount of time necessary to identify additional or new information or rationale and for staff to respond (81 Fed. Reg. at 92334);
- Number of claimants who could respond with information that the insurer or TPA will need to evaluate or how much time will be required to evaluate such information (81 Fed. Reg. at 92335);
- Number of disability claims that are filed as well as denied (81 Fed. Reg. at 92335);
- Percentage of covered individuals who file short-term disability claims (81 Fed. Reg. at 92335);
- Number or percent of claims that could be required to contain additional discussion in the related adverse benefit determinations (81 Fed. Reg. at 92336);
- Number of possible new requests from claimants for disclosures (81 Fed. Reg. at 92336);
- Costs that are expected to be incurred by plans and carriers in evaluating policies and procedures to ensure they are compliant with the requirement of independence and impartiality (81 Fed. Reg. at 92338);
- Costs to plans and carriers of responding to claimants’ requests for statistics and other information related to independence and impartiality (81 Fed. Reg. at 92338);
- Frequency and expense of increased litigation and discovery related to litigation claims alleging claims regulation procedural violations (81 Fed. Reg. at 92339);
- Cost to plans and carriers associated with the review and appeal of a claim regarding rescission of coverage (81 Fed. Reg. at 92339);
- How often plans rely on new or additional evidence or rationale during the appeals process or the volume of materials received (81 Fed. Reg. at 92340); and
- Type and extent of benefits associated with the final regulations generally, as well as when compared against all applicable costs (81 Fed. Reg. at 92333).

Such data is not publicly available. However, it could be developed in the context of a proposal to delay the Regulation pending a review, and the Coalition would be pleased to work with the Department on data collection.

It is important to recognize that collecting and analyzing the relevant data is a complex process and will take many months and a significant expenditure of resources. Each carrier's data is proprietary and contains sensitive business information. Consequently, collection requires an independent third party to put in place a process to collect the data that protects the carriers' trade and business secrets, which may include, among other things, negotiating specific non-disclosure, security, and data retention agreements. The process must also be carefully designed to ensure that there are no violations of anti-trust or other federal or state laws.

Once the data is collected, the independent third-party must process the data so that it is usable. Each carrier will likely collect and report data in different ways, so to be usable, the data must be standardized to ensure an apples-to-apples comparison. Then the data must be aggregated and anonymized to ensure that no data point can be attributed to a single carrier. Finally, it must be reviewed and analyzed to ensure accuracy.

As outlined above, the data collection process can take many months and significant resources. The Coalition is willing to help facilitate the collection and synthesis of data to aid the Department's review of the Regulation and would work diligently to collect data needed for any additional steps the Department may take. The Coalition would also be happy to discuss the exact data points that are reasonably obtainable.

In the meantime, the Coalition is able to share some estimates demonstrating that allowing the Regulation to go into effect will result in cost increases significantly in excess of the Department's estimates. The following estimates are based on a confidential survey of carriers covering approximately 18 million participants in group long term disability plans, which reflects approximately 45% of the group long-term disability insurance market:

- For respondents, the Regulation will increase staffing and litigation costs in 2018 alone by approximately \$23-36 million in the aggregate. If we extrapolate this data to the entire marketplace, costs can be estimated to increase by \$51-80 million starting in 2018. Note that these cost estimates largely represent ongoing costs of compliance with the Regulation and do not include implementation costs (*e.g.*, system development, training), which will be significant.
- One carrier estimates that there will be average annual premium increases of \$225 per participant in 2018.
- Several respondents estimated that the Regulation will cause average premium increases of 5-8% in 2018. Note that some carriers have rate guarantees in place for certain policies in 2018, so there will be even more significant increases once those guarantees end.

As noted, these are preliminary estimates based a limited survey, and the Coalition would be more than willing to help the Department collect and analyze more formal data.

As we discussed at our meeting, the demand for disability insurance is highly inelastic, so even minor price increases can result in take-up rate reductions. We are not aware of any public study specifically on demand inelasticity, but anecdotal evidence is informative. One carrier reported that when Vermont mandated mental health parity several years ago, there was an approximately 20% increase in premiums, which resulted in a 20% decrease of covered employees.

Given the foregoing, the Coalition urges the Department to issue guidance as soon as possible delaying the regulation's January 1, 2018 effective date while the Department solicits and reviews relevant data.

We appreciate your time and attention to this issue and would be happy to discuss it further.

Best,
Michael

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