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DEPT. OF LABOR  
WASH. D.C. 20210



Financial Security...for Life.

July 17, 2017

The Honorable Alexander Acosta  
Secretary  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

Re: Department of Labor Disability Claims Regulation

Dear Secretary Acosta:

Thank you for the productive meeting last week. I write to follow up on an additional issue of importance to the life insurance industry regarding a Department of Labor (DOL) final rule (81 Fed Reg. 92316 (Dec. 16, 2016), regarding private disability claims procedures (the "Regulation") under the Employee Retirement Income Security Act of 1974 ("ERISA"). We urge you to delay and reexamine this Regulation, which was rushed to completion and finalized by the prior Administration in its final days. The Regulation is inconsistent with congressional intent because it inappropriately applies the Affordable Care Act ("ACA") claims procedures to disability plans and will compromise working Americans' ability to protect themselves from the financial risk of a disabling illness or injury.

The DOL's basis for promulgation of the Regulation is its belief that disability claimants deserve protections "equally as stringent" as those in place for health care participants under the ACA. However, in setting that goal, the DOL completely ignored the facts that (1) disability claims adjudication is fundamentally different from medical claims adjudication and (2) there are already existing robust consumer protections applicable and available to disability claimants that have worked for well over a decade.

The fundamental differences between health and disability claims are material to the Regulation. The majority of medical claims are auto-adjudicated (i.e., never involving human analysis). The administrator's benefit decision is typically based on simple procedural questions (e.g., whether the benefit is a covered benefit, whether the procedure required a prior authorization, whether the health care provider was in or outside the network, etc.). Disability income claims adjudication, on the other hand, requires a much more complex and time-consuming analysis as a claim can last years or decades. Without limitation, disability claims may involve determining the nature of the underlying medical condition, the extent of the individual's resulting functional deficits, and the impact on the individual's ability to work. Disability claims may involve reviews by not only the benefits analyst, but also physician consultants and vocational experts. The complexity of these claims is why regulations that serve medical claimants will not work for disability income claimants. Moreover, the medical and disability claims regulations were separated by the DOL over fifteen years ago due to the differences in claim adjudication.

The Regulation is also problematic because DOL failed to demonstrate that there are existing

problems associated with disability claims adjudication that require regulatory action. While the DOL expresses concern about the volume of litigation related to ERISA governed disability claims, it completed no analysis of how the volume of litigation compares to the volume of claims that are approved. This analysis would demonstrate that far more claims are paid and the number of claims that result in litigation is incredibly small in comparison. Further, fully insured disability claims procedures are highly regulated with many state and federal consumer protections. Disability claimants already have a full and fair claims review process that balances the rights of claimants with the need for operational and cost efficiency. Despite the existing consumer protections and the lack of evidence demonstrating serious or significant problems, the DOL essentially elected to apply the ACA claims procedures to disability plans, basically to have the claims procedures be relatively the same as medical claims procedures.

The Regulation will delay any final decision for the claimant and will significantly increase the administrative burdens on employers and disability insurance issuers, hurting the very employee the rule was purporting to help. If private disability insurance is not available or if benefits are delayed, the employee will have to rely more on their savings, reducing their overall financial security. In fact, the most significant cause of bankruptcy is due to sickness.

Examples of the increased administrative burden on employers and carriers that will increase the cost of providing disability income protection are:

- The Regulation complicates the processing of disability benefits by imposing new steps and evidentiary burdens in the adjudication of claims, and forcing plans to consider disability standards and definitions different from those of the plan;
- The Regulation imposes these new complications without allowing any additional time in which to consider the claim and explain the ultimate decision to the claimant;
- The Regulation explicitly tilts the balance in court cases against plans and insurers, undoing a statutory and regulatory scheme that has worked for decades; and
- The Regulation creates perverse incentives for plaintiff's attorneys to side-step established procedures and clog the courts for a resolution of benefit claims.

Because of these new unnecessary burdens, fewer American workers will have access to employer sponsored disability insurance. The practical result is that more families and taxpayers will have to bear the financial risk of a disabling illness or injury, jeopardizing their retirement security and financial security overall. Additionally, the majority of private disability plans provide return-to-work assistance to help and encourage disabled individuals return to the labor force. Without access to disability income coverage in the employment context, many individuals who become disabled will not be able to avail themselves of this type of return-to-work assistance, with the result being increased reliance on, and cost to, related state and federal public programs (such as federal Social Security Disability Insurance). Private disability insurance typically includes return-to-work assistance, which helps disabled individuals return to the workforce, and is generally more effective than the government's Social Security Disability Insurance return to work programs.

Finally, the DOL failed both to qualitatively describe the benefits of the proposed regulations, and to adequately quantify the proposed regulations' costs, a prerequisite of Federal agency rulemaking. In its final Regulation preamble, the DOL stated, in part, that it closely considered the potential economic effects, including both benefits and costs. However, in the very next sentence the DOL

stated that due to data limitations and a lack of effective measures it did not have sufficient data to quantify the benefits associated with the final Regulation. And as previously mentioned, the DOL also failed to provide a reasonable basis or compelling need for this Regulation.

The ACLI has always been in complete agreement that the full and fair equitable administration of disability income claims is an important objective. However, the final Regulation does not seem to meet that objective. Therefore, we urge DOL to take immediate action to delay and reexamine the Regulation so that American workers will continue to have access to affordable, high quality disability income protection.

Sincerely,



GOVERNOR DIRK KEMPTHORNE

Thank you, w/r. Secretary.