

ERISA Advisory Council

2023 Advisory Council on Employee Welfare and Pension Benefit Plans

Long-Term Disability Benefits and Mental Health Disparity

Issue Chair: Megan Broderick
Issue Vice-Chair: Mayoung Nham
Drafting Team: Mark DeBofsky, Beth Halberstadt, Tonya Manning, Alice Palmer, Jack Towarnicky

The 2023 Advisory Council will study the scope and impact of employee benefit plans' limitations on disability benefits for mental health and substance use conditions. For example, many long-term disability (LTD) plans limit the duration of benefits for disabilities resulting from mental health conditions, while benefits for disabilities due to other medical conditions may continue until retirement age. The Council will study the extent, prevalence, rationale and impact of these limitations on disability benefits, including whether certain health conditions have been misclassified as being subject to such limitations, and will make recommendations based on its findings.

The Council notes that the Mental Health Parity and Addiction Equity Act (MHPAEA), which requires parity for coverage of medical/surgical and mental health and substance use conditions, does not apply to LTD plans. However, one state (Vermont) has mandated mental health parity in disability insurance and foreign human rights laws in the UK and Canada also mandate mental health parity. The Council expects to gain valuable insight from a review of such laws and their impact on disability benefits for mental health and substance use conditions, as well as the plan sponsor/employer rationale for those who voluntarily provide LTD benefits that apply equally to all disabilities.

The work of the Council is intended to assist the Department in determining whether there is a need for measures to address these limitations. It also will inform and educate employers and plan sponsors about the vulnerabilities their employees/participants face and the resources available to address them. The Council hopes to hear from witnesses representing insurance companies, mental health treatment providers, actuaries, plan representatives, mental health advocates, and other experts.

The 2012 Council studied access to employer-sponsored LTD coverage as well as post-disability income replacement and its impact on retirement security. Its report, *Managing Disability Risks in an Environment of Individual Responsibility*, included recommendations focused on education, regulation updates, and three items of guidance: (1) auto-enrollment, (2) characterization of long-term disability as welfare benefits when paid after normal retirement age, and (3) post-disability continuation of retirement benefit accruals and contributions. The report did not focus on LTD coverage for mental health conditions.