

DOL Finalizes Disability Claims Procedure Rules

The DOL has finalized regulations that will change the procedures ERISA plans must follow in adjudicating claims for benefits conditioned on a determination of disability, including claims for disability retirement benefits. The final rules, which generally follow the proposed regulations, add a requirement that notices of an adverse benefit determination on review set out specific information about plan-mandated deadlines for bringing lawsuits under ERISA.

Background

Employee benefit plans subject to ERISA must follow specific rules in adjudicating and administering benefit claims and appeals. These rules generally apply to all benefits subject to ERISA, although there are some differences depending on the type of benefit – for example, the timeframes for deciding health and disability benefits are shorter than they are for claims involving life insurance or pension benefits.

In November 2015, DOL proposed new regulations governing the adjudication of claims for a benefit conditioned on a finding of disability by the plan administrator. The proposed rules generally adopted the additional claims and appeals requirements applicable to non-grandfathered group health plans under the Affordable Care Act and required plans to satisfy additional procedural requirements. See our [December 15, 2015 For Your Information](#).

Final Regulations

The [final regulations](#) generally adopt the additional procedural and notice requirements set out in the proposed regulations with some limited modifications and additions.

What benefits are subject to the final rules?

A benefit is subject to the special rules for disability claims if the claims adjudicator must make a determination of disability in order to decide the claim. This includes claims for:

- Short-term and long-term disability benefits
- Waivers of premium under a life insurance policy
- Disability retirement benefits

The special disability rules do not apply if the finding of disability was made by a third party for a purpose unrelated to making a benefit determination under the plan. For example, if a pension plan conditions eligibility for disability retirement benefits on a prior determination of disability by the SSA or by the employer's long-term disability plan, the claim would be subject to ERISA's rules for pension rather than disability claims.

Obligation to maintain reasonable claims procedures

ERISA requires all employee benefit plans to establish and maintain reasonable claims procedures. The proposed regulations set out some additional conditions that plans providing disability benefits must meet to satisfy this requirement. The final rules modify these conditions as described below.

Avoidance of conflicts of interest. Recognizing the potential for conflicts of interest in claims involving determinations of disability, the proposed regulations provided that “decisions regarding hiring, compensation, termination, promotion or other similar matters with respect to any individual (such as a claims administrator or medical expert) must not be made based upon the likelihood such individual will support the denial of benefits.” The final regulations adopt this provision but add “vocational expert” to the examples of individuals to whom this requirement applies; in the preamble, the DOL notes that these examples are not exhaustive. The final regulations also clarify that the rule applies to individuals hired or compensated by third parties providing claims adjudication services and that a plan is required to take steps (e.g., in the terms of its service contract and ongoing monitoring) to ensure that the service provider’s policies, practices and decisions on hiring, compensating, terminating or promoting covered individuals are not based on the likelihood that the individual will support the denial of benefits.

An Important Point ...

A plan is required to take steps to ensure that its service provider’s policies, practices and decisions on hiring, compensating, terminating or promoting covered individuals are not based on the likelihood that the individual will support the denial of benefits.

Allowing claimant to review file and present evidence and testimony. The proposed regulations included a provision that claimants must be allowed to review the claim file and to submit evidence and testimony; this provision is not in the final rules. In the preamble, the DOL explains that the provision duplicated rights provided in current regulations and notes that its elimination should not be viewed as in any way restricting claimants’ rights to documents, records or other information under the regulation, or to restrict their rights to present evidence.

Disclosure Requirements for Adverse Benefit Determination Notices

The proposed regulations added new disclosure requirements for notices of an adverse benefit determination and notices of an adverse benefit determination on review with respect to a claim for disability benefits. The final regulations generally adopt these disclosure rules with the modifications described below.

Explanation of basis for disagreement with third-party views. The proposed regulations required a notice of an adverse benefit determination or a notice of an adverse benefit determination on review to include a discussion of the decision, including an explanation of the basis for disagreeing with, or not following third-party views. If the claimant provided the plan with the views of treating health care professionals, the notice had to explain why the plan disagreed with those views. In addition, the proposed rules provided that if the plan did not accept a disability determination made by another third-party payer of disability benefits, such as the Social Security Administration (SSA) or an insurer, the notices were required to set out the basis for the plan’s disagreement with the third party’s determination. The final rules:

- Extend the requirement to explain why the plan disagreed with the views of treating health care professionals to the views of vocational professionals who evaluated the claimant, if presented to the plan
- Limit the requirement to set out the basis for the plan’s disagreement with a third party’s determination of disability to disability determinations made by the SSA presented by the claimant to the plan

The final rules add a new disclosure requirement. If the plan obtained advice from medical or vocational experts in connection with the adverse benefit determination that may have been inconsistent with its decision, the notice must include an explanation about why it disagreed with, or did not follow, this advice. The explanation must be provided without regard to whether the advice was relied on in making the determination.

Explanation of scientific or clinical judgment. The final rules provide that when an adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, the notice must either include an explanation of the scientific or clinical judgment for the determination, applying the terms of the plan to the claimant’s medical circumstances, or a statement that such an explanation will be provided at no charge upon request.

Comment. The DOL states in the preamble to the regulations that this is not a new requirement but was added because its absence from the proposed regulations could be misinterpreted.

Disclosure of deadline for bringing civil actions under ERISA. In *Heimeshoff v. Hartford Life & Accident Ins. Co.*, the Supreme Court unanimously ruled that an ERISA plan, by its terms, can impose reasonable time limits on a claimant’s opportunity to file a lawsuit in federal court challenging an unfavorable plan benefits determination. The Court characterized the plan as a contract in which the plan sponsor, one party to the contract, and plan participants and beneficiaries, the other party, agree to a specified limitations period for bringing legal action and held that this contractual limitation period must be respected unless (1) there is a “controlling statute to the contrary,” or (2) the period is “unreasonably short.” (See our [January 17, 2014 For Your Information](#).)

Citing the *Heimeshoff* decision, the proposed regulations requested comments on whether plans should be required to include a statement about any contractual limitation period for bringing a lawsuit in any adverse benefit determination on review.

Limitation period for filing suit must be spelled out

A notice of adverse benefit determination on review must describe any applicable contractual limitation period for filing bringing a lawsuit under ERISA and set out the calendar date on which the limitation period expires for that particular claim.

The final rules add a new requirement for notices of an adverse benefit determination on review. In addition to notifying claimants of their right to bring a civil action under ERISA, the notice must describe any applicable contractual limitation period for bringing such an action and set out the calendar date on which the limitations period expires for that particular claim.

Comment. In the preamble, DOL states that although this requirement is technically applicable only to disability benefit claims, it believes that notices of an adverse benefit determination on review for other benefit types are required to provide some type of disclosure about any applicable contractual limitation period. Although the specific elements of the disclosure might vary depending on the benefit, satisfaction of the requirements for disability benefits would be considered an appropriate disclosure.

Culturally and linguistically appropriate notices. The final regulations adopt the proposed rules on culturally and linguistically appropriate notices without change. Thus, a plan must provide communications in a non-English language to claimants whose address is in a United States county that has been identified by the Census Bureau as having 10% or more of its population literate only in the same non-English language. Notices

related to claims and appeals decisions addressed to claimants residing in the county must contain a one-sentence notice in the applicable language about the availability of language assistance, and the plan must provide notices in that language upon request. In addition, the plan must provide oral language services, such as a telephone customer assistance hotline, that include answering questions and providing assistance in filing claims and appeals in the applicable non-English language.

Effective Date

The final regulations become effective on January 18, 2017. Changes to the rules made to the claims procedures for disability benefits by the final regulations, including the requirement to disclose the expiration date of any contractual limitation period and to provide notices in a culturally and linguistically appropriate manner, generally apply to claims filed on or after January 1, 2018. Claims for disability benefits filed from January 18, 2017 through December 31, 2017 are subject to the ERISA claims procedure requirements in effect immediately prior to the final regulation effective date.

In Closing

Most plans providing disability benefits will have to modify significantly their procedures in order to comply with the new requirements.

Particularly challenging will be ensuring that notices of an adverse benefit determination on review include required information on the expiration of any contractual limitation period for bringing actions under ERISA. While not clear, it is possible that courts will not enforce a plan's limitations period if that information is not communicated.

What are the required non-English languages?

Each year, the US Census Bureau publishes a list of those counties in which at least 10% of all residents are literate in the same non-English language. For 2016, the applicable languages are as follows:

- Chinese (required only for San Francisco County, California)
- Tagalog (required only for two counties in Alaska)
- Navajo (required for Apache County, Arizona)
- Spanish (required for counties in 24 states and Puerto Rico)

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