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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,

I write as an advocate for those disabled employees who are not familiar enough with the perils of ERISA to share the potential import of the regulations, and to share my great concern about any delays in implementation. My firm represents claimants in ERISA disability litigation throughout the country. We see first-hand the impact upon unsophisticated claimants arising from the significant disparity of rights in these cases, some of which are being positively impacted through the implementation of these regulations.

The Department's proposed delay of the final regulations raise serious issues regarding transparency in the rule-making process. The Department finalized rules after an extensive notice and comment period that provided 60 days and yielded numerous comments from various stakeholders. Insurers and plans, and the organizations that represent them, came out in force. Many of industry comments suggested 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 - information that could have been contributed during the proper notice and comment period but somehow was not. The ERISA participants and their representatives have no way to respond to this input, since it is not being made available. The public is not being told why this post notice and comment information is more valuable than what was collected during the notice and comment period itself.

It seems quite apparent that there were meetings with industry representatives, and that the industry and certain members of Congress sent letters addressing issues more favorable to the insurance community, but the content of these meetings and letters are not entirely disclosed. How can this be fair? The industry apparently referenced a "confidential" study that predicts a significant, but not well articulated, increase in premiums. Moreover, it is 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.

To make matters worse, 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 on this, the Department proposes to make a new decision on how to protect participants' rights reasonable procedures in the adjudication of the disability benefits. How such an endeavor can be fair defies explanation. 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. Moreover, we do not even know what the data is being predicated upon, assumptions being accounted for, or any other detail.

I do not assume that the industry is correct in estimating that premiums for group disability benefits would increase by 5-8%. (While it may be predictable that premiums would rise in Vermont in response to a mental health parity statute, it is less clear that enhanced process-based rules would have even a fraction of that effect.) It simply defies any basis of logic to make such a broad leap in pricing due to refining the claim process.

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, regardless of how great, 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.

I request 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.

Thank you considering my comments,

FRANKEL & NEWFIELD, P.C.

Jason Newfield, Esq.