

**America's Health  
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*Submitted electronically via e-ORI@dol.gov*

October 27, 2017

Mr. Timothy Hauser  
Acting Assistant Secretary of Labor  
Employee Benefits Security Administration  
Room N-5655  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, D.C. 20210

**Re: Claims Procedure for Plans Providing Disability Benefits; Extension of Applicability Date (RIN 1210-AB39)**

Dear Acting Assistant Secretary Hauser:

America's Health Insurance Plans (AHIP) greatly appreciates the opportunity to comment on the proposed delay of the applicability date of the U.S. Department of Labor (Department) final rule (Rule) amending disability claim procedures (81 Fed Reg. 92316 (Dec. 16, 2016)) under the Employee Retirement Income Security Act of 1974 (ERISA). AHIP is the national association whose members provide coverage for health care and related services, including disability income protection coverage. Through these offerings, we improve and protect the health and financial security of consumers, families, businesses, communities and the nation. We are committed to market-based solutions and public-private partnerships that improve affordability, value, access, and well-being for consumers.

**AHIP strongly supports a delay of the applicability date of the Rule.** However, the proposed 90-day delay would neither provide enough time for stakeholders to collect and compile the requested impact data nor allow the Department enough time to digest comments and re-examine and revise the Rule. We support a longer delay extensive enough to accommodate thorough re-examination and revision of the Rule.

We also recommend the Department allow more time for insurers and other stakeholders to develop and provide the useful data the Department now seeks. Therefore, we request that the Department extend the proposed 60-day comment period to 120 days. For example, the impact of the Rule's provisions for deemed exhaustion is difficult to quantify because the impact will depend on the behavior of claimants and their attorneys in a new legal environment. Moreover, we request that the Department determine the appropriate amount of time for insurers to come into compliance when the details of the Rule are finalized, and the extent of any required changes are known.

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As noted in previous correspondence, AHIP has serious concerns regarding the Rule. While intended to improve the claim review process and consumer experience for private disability income insurance claimants, if allowed to take effect as currently written, the Rule would instead drive up the cost of private disability income protection without providing any real benefit to working Americans. This would impose counterproductive, unnecessary, and increased costs and reduce consumer access to disability income protection.

We urge the Department to complete a careful review and provide the needed regulatory relief to avoid the unnecessary disruption and expense that the Rule would have as currently written. If implemented “as is,” the Rule would have serious harmful effects, including:

1. **Increased Litigation, Underdeveloped Administrative Records, Unnecessary Additional Legal Costs, and Increased Burdens Upon the Federal Courts.** Of major concern, the Rule’s provisions would greatly increase disability income claim litigation and litigation costs. The Rule provides, at the claimant’s option, for a short-cut to the federal courts and to *de novo* court review if a plan does not “strictly adhere” to its provisions. For many years, federal courts have employed a “substantial compliance” standard which, appropriately, allows room for inconsequential and non-material errors within the efficient administrative process envisioned under ERISA. Unfortunately, the effect of the Rule as promulgated would be to give claimants and claimants’ attorneys inappropriate incentives to allege failure of strict adherence even when no such failure occurs or when lack of strict adherence is trivial. As a result, federal court dockets would become even more burdened than they already are. Claimants who short-cut the administrative process will bring to court less developed and incomplete administrative records. This will leave federal courts with the option either to act as a substitute claim examiner who further develops the record – an expensive and lengthy process - or to remand the matter back to the claim administrator from which it came. Inevitably, this will lead to a great deal more unnecessary litigation and at very significant additional cost. The amount of cost, burden, and disruption would depend upon the extent of claimant and attorney recourse to deemed exhaustion. We fail to see how the deemed exhaustion provisions of the Rule would enhance the fullness and fairness of claim decisions. We see clearly, however, that they would significantly prolong the claim adjudication process.
2. **Greater Financial Risk to Families and Costs to Government.** Because demand by employees for private disability income protection is sensitive to the cost of coverage, the Rule would drive down the number of working Americans with private disability income protection, exposing more American families to the financial risk of disabling illness or injury. As a result, not only would more families face financial hardship, the federal

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government, states, and taxpayers would also face higher costs because, lacking disability income protection benefits, more disabled workers would be forced to rely on public assistance programs.

- 3. Delayed Dispute Resolution.** In addition, the Rule's new requirement mandating a claimants' right to review and respond to new information before a final claim decision raises serious concerns. These requirements would often result in protracted exchanges between the plan and the claimant and would impose delays and additional costs. Under current regulations, claimants already have the right to submit, and adjudicators are required to consider, whatever comments, arguments, and information claimants wish to submit during both the initial claim stage and on appeal. Furthermore, many plans also provide for an additional second opportunity to appeal a claim denial, which allows a claimant, again, to submit whatever information, arguments, and comments they desire to submit. If the Rule is implemented in its current form, these claimant-friendly voluntary appeals may be eliminated as plans make adjustments to offset the additional delay and cost of the Rule.

Given the extent of problems with the Rule and its significant costs that far outweigh any potential benefit, we support the delay of its applicability to allow the Department to engage in a more thorough process of issuing an improved proposed rule. We will also be providing more detail on our concerns and respond to the Department's questions in a separate comment letter as part of the request for substantive comments and data.

AHIP and our disability income plan members welcome the opportunity to work with the Department to help inform the re-examination of the Rule. To allow adequate time for data collection, a thorough re-examination, revision, public comment, and implementation, we urge the Department to delay applicability of the Rule for a length of time that will fully accommodate each of these crucial steps.

Sincerely,



Matthew Eyles

Senior Executive Vice President and Chief Operating Officer