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General Comment

Dear Deputy Assistant Secretary Hauser:

I ask that the DOL not modify or delay the Final Regulation on Claims Procedure for Plans Providing Disability Benefits, 81 Fed. Reg. 92316 (Dec. 19, 2016) that are scheduled to go into effect on April 1, 2018.

I am an attorney at Chisholm Chisholm & Kilpatrick in Rhode Island. We represent disabled individuals in their claims for wrongly denied longterm disability (LTD) benefits. I submitted comments in support of the regulations during the initial notice and comment period, and against the recent decision to delay their implementation.

There is no reason to modify or further delay implementation of the regulations. The

objectors have not established that the regulations will significantly increase costs. This is an empty claim made by the insurance industry.

Even if there were a modest cost increase, it would be outweighed by the need for the new regulations, which provide procedural safeguards and promote fairness for claimants during the administrative process. This need is underscored by the significant procedural obstacles that ERISA LTD claimants face in court. For example: (1) there are no jury trials; (2) the administrative record is closed after the administrative appeal denial and the record can rarely be supplemented in litigation; (3) courts often apply an unfavorable standard of review, and (4) there are no remedies such as punitive damages to discourage unfair and self-serving behavior on the part of Plans and insurers. The United States District Court for the District of Massachusetts recently commented that "[t]he insurance industry found it could largely immunize itself from suit due to the Employee Retirement Income Security Act ("ERISA")." United States v. Aegerion Pharm., Inc., 2017 WL 5586728, at *7 (D. Mass. Nov. 20, 2017).

The new regulations are an important step towards holding ERISA administrators to the "higher-than-marketplace quality standards" owed to claimants. See Metro. Life Ins. Co. v. Glenn, 554 U.S. 105, 128 (2008) ("ERISA imposes higher-than-marketplace quality standards on insurers, requiring a plan administrator to 'discharge [its] duties' in respect to discretionary claims processing 'solely in the interests of the [plan's] participants and beneficiaries'").

The new regulations reinforce common sense principals, and mandate practices, to which insurance companies and other ERISA LTD plan fiduciaries should have committed themselves without regulation. For example, the new regulations promote the use of impartial consultants and require administrators to give the claimant the chance to review and respond to any new evidence or opinions before a final denial decision. This right is critical, where discovery is seldom allowed in court and where insurers sandbag claimants by relying on new evidence and opinions to deny an appeal, knowing that the record will be closed in court.

The new regulations require administrators to meaningfully consider and give weight to favorable Social Security Disability Insurance (SSDI) decisions. This makes sense given that the SSDI definition of disability is more difficult to meet than most ERISA Plan own occupation definitions of disability. It is certainly fair to require insurers to give weight to a favorable SSDI decision because, among other things, insurers require claimants to apply for SSDI benefits and then offset them, reducing the amount that the insurer has to pay the claimant each month.

Finally, the new regulations mandate that administrators disclose the time for filing a lawsuit. This is imperative because ERISA Plan contractual limitation periods can be confusing to claimants and indecipherable.

These are only a few examples of important issues addressed by the new regulations. Without these protections, many insureds will be left with what amounts to illusory LTD coverage. I ask that the DOL not modify or delay the Final Regulation on Claims Procedure for Plans Providing Disability Benefits, 81 Fed. Reg. 92316 (Dec. 19, 2016) that are scheduled to go into effect on April 1, 2018.

Very truly yours,

/s/ Mason Waring