UnitedHealthcare®

December 11, 2017

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Ave., NW
Washington DC 20210

Re: Claims Procedure for Plans Providing Disability Benefits (RIN 1210-AB39)

Submitted Electronically: www.regulations.gov

Dear Sir/Madam:

UnitedHealthcare (UHC) is submitting comments regarding the standards for claims for disability benefits under employee benefit plans subject to the Employee Retirement Income Security Act (ERISA). A Proposed Rule delaying the implementation date of new requirements for disability income (DI) benefit claims was published in the *Federal Register* on October 12, 2017 (82 Fed. Reg. 47409). UHC provides coverage and administrative services on behalf of employee plans for short- and long-term disability income benefits. The goal of these programs is to provide income security for disabled workers and ensure they have the resources to return to work if possible after an injury.

UHC is dedicated to helping people live healthier lives and making our nation's health care system work better for everyone. UHC serves the health care needs of more than 100 million people worldwide, funding and arranging health care on behalf of individuals, employers and the government. As America's most diversified health and well-being company, we not only serve many of the country's most respected employers, but we are also the nation's largest Medicare health plan – serving nearly one in five seniors nationwide – and one of the largest Medicaid health plans, supporting underserved communities in 24 states and the District of Columbia. Recognized as America's most innovative company in our industry by Fortune magazine for six years in a row, we bring innovative health care solutions to scale to help create a modern health care system that is more accessible, affordable, and personalized for all Americans.

The Department of Labor (DOL) amended the standards applicable to claims for DI benefits in December 2016. One provision established new requirements for the notice of an adverse benefit determination that is provided to claimants by their plan:

> (ii) In the case of a plan providing disability benefits, in addition to the information described in paragraph (j)(4)(i) of this section, the statement of the claimant's right to bring an action under section 502(a) of the Act shall also describe any applicable contractual limitations period that applies to the

> claimant's right to bring such an ac0tion, <u>including the calendar date on which the contractual limitations period expires for the claim</u>.

29 CFR §2560.503-1 (4)(i) (emphasis added). This provision, which requires notices to include the specific date by which claimants must file a federal court action, raises challenges for service providers, such as UHC, which provides DI coverage for several thousand employer plans.

Plan limitation periods and their triggering events vary widely – in some cases the limitations period begins when a claim for benefits is originally filed, in others it may run from the date the plan issues its final internal appeal decision, the limitations period may be subject to tolling, etc. (plans may have one or two levels of internal appeal). If the limitations period is not established by the plan, state law controls.

Employers choose whether or not to offer benefits. Many employers choose third-party administrators (TPAs) to administer plans as a cost-effective way of providing coverage, rather than handling plan administration in-house. As a result, a TPA may be handling claims for hundreds, if not thousands, of different plans. Given the number of plans that a TPA may administer and the variability of both the limitations period and the triggering event, it is challenging for the TPA to know the specific calendar date for the expiration of the limitations period when the notice is sent to a claimant. Requiring the specific calendar date for the termination of the limitations period in the notice may result in TPAs manually processing all notices, which significantly increases costs to the plan.

The plan's limitations period is generally described in the Summary Plan Description (SPD) document which serves as the "source of truth" for all aspects of the plan. It is in the best interests of the claimant to refer to the SPD for the specific limitations period, rather than the adverse benefit determination notice which may not always accurately state the termination date.

The standards for ERISA plan claim denials require the inclusion of "a statement of the claimant's right to bring a civil action under section 502(a)." (29 CFR §§2560.503-1(g)(1)(iv) and 2560.503-1(j)(4)). A number of federal appellate court opinions have recently interpreted these notice rules to require disclosure of a specific limitations expiration date in the adverse benefit determination notice without which the notice is considered non-compliant.[1] These decisions suggest that a compliant SPD's limitations language is rendered meaningless due to the absence of a corresponding calendar date in the notice – an interpretation that runs counter to the DOL's own position that, "the SPD is the primary vehicle for informing participants and beneficiaries about their rights and benefits under the employee benefit plans in which they participate." (65 Fed Reg. 70226, 70228 (Nov. 21, 2000)). As a result, there may be challenges for TPAs having to consider the different plan limitations periods in the SPDs and jurisdictional issues related to the employer's and claimant's residence if the limitations period has not been established by the plan.

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[1] *See: Ortega Candelaria v. Orthobiologics, LLC*, 661 F. 3d 675 (1st Cir. 2011), *Moyer v. Met Life*, 762 F. 3d 503 (6th Cir. 2014), and *Mirza v. Ins. Admin of Am., Inc.*, 800 F. 3d 129 (3rd. Cir. 2015).

We urge the Department to adopt the reasonable interpretation of the notice rules requiring a statement alerting members of their rights to an ERISA 502(a) action. That statement, accompanied by language directing members to the primary disclosure vehicle—the SPD—for further detail and guidance, satisfies the intent of the rule to inform claimants of their rights under ERISA.

We recommend that the notice include the statement of the claimant's right to bring a civil action under Section 502(a) along with a statement that the claimant should refer to the SPD for the limitations period and a copy of the SPD is available from his or her employer. We believe this approach will give claimants the appropriate notice of their ERISA rights and where to determine the specific timeframe for filing a legal action if necessary.

We also recommend that the notice informing the claimant that they should refer to the SPD for the limitations period and where to obtain a copy of the SPD should be included in the final adverse benefit determination sent to a claimant. Any such notice prior to the final adverse benefit determination, particularly as many plans have two levels of appeal, would be premature and potentially confusing to the claimant.

We appreciate the opportunity to provide comments to the DOL on this issue. Please feel free to contact me if you have any questions.

Sincerely,

Gavin Galimi
Deputy General Counsel
UnitedHealthcare