

**America's Health
Insurance Plans**

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May 10, 2017

The Honorable R. Alexander Acosta
Secretary of Labor
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Secretary Acosta:

America's Health Insurance Plans (AHIP) is the national association whose members provide coverage for health care and related services, including disability income protection insurance 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.

On behalf of AHIP and our members, I would like to congratulate you on your recent Senate confirmation. AHIP and our members very much look forward to working with you and your staff at the Department of Labor on issues of mutual importance to the Administration, our members, and the American people.

We write to express serious concerns regarding 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). While purporting to improve the claim review process for private disability income insurance claimants, the Rule will instead, if allowed to take full effect, drive up the cost of private disability income protection without real benefit to working Americans.

AHIP urges you to take quick action to delay the Rule's full effectiveness to give your Department adequate time and opportunity to review it thoroughly and to remove or revise its flawed provisions. Although the Rule takes full effect for claims made on or after January 1, 2018, disability plan administrators are already beginning to undertake the extensive and expensive steps necessary to comply with the Rule's new requirements. Timely regulatory relief is needed to avoid unnecessary disruption and expense. If implemented in its current form, we believe the Rule would have important harmful effects, including:

1. **Increased Litigation and Much Higher Legal Costs.** Of major concern, the Rule's provisions would greatly increase disability income claim litigation and litigation costs. The Rule provides for expedited recourse to the federal courts, and to *de novo* court review, if a plan does not "strictly adhere" to its provisions. While adherence to the Rule

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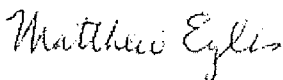
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is, of course, an appropriate policy goal, the effect of the Rule as promulgated would be to give claimants and claimants' attorneys inappropriate incentives to allege failure to strictly adhere to its provisions even when no such failure occurs or when lack of strict adherence is trivial. Inevitably, this would lead to a great deal more litigation and very significant additional costs.

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 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 requirements for claimants' right to review and respond to new information bearing on a claim appeal raises serious concerns. These requirements would likely result in protracted exchanges between the plan and the claimant that would impose delays and additional costs.
4. **Inappropriate Application of SSA Standards to Private Plans.** The Rule also requires plans to discuss the basis for disagreeing with a Social Security Administration (SSA) disability determination, despite that fact that SSA's definitions, policies, and procedures will never match those of a private disability income plan. Consequently, we believe the application of SSA standards to private plans is inappropriate.

Given the totality of problems with the Rule and the significant costs that far outweigh any potential benefits, we urge you to act as soon as possible to delay its implementation and start the process of issuing an improved proposed rule. AHIP and our disability income plan members would welcome the opportunity to discuss our concerns with the Rule with you and/or members of your team at your earliest convenience.

Sincerely,



Matthew Eyles
Executive Vice President
Policy and Regulatory Affairs