



The Department of Labor Reconsiders Changes to ERISA's Claims Handling Guidelines

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In December of 2016 the United States Department of Labor (“DOL”) promulgated sweeping changes to the claims handling regulations pertinent to ERISA covered disability claims, 29 C.F.R. Section 2560.503-1 (“2016 Amendments”). As reported in the September newsletter, the 2016 Amendments would have required claim administrators to, among other things: 1) take proactive steps to ensure the independence and impartiality of claims decision; 2) make certain disclosures to ostensibly promote transparency of claim decisions and explain divergent views in certain key sources of information; and 3) provide notices in a “culturally and linguistically appropriate manner.” Additionally, the rule includes the following problematic and potentially costly provisions. The new exhaustion of administrative remedies provisions would permit claimants to file suit and skip further internal review for even minor procedural violations. The new appeals procedures would also complicate the appeals process, and would reduce the time for claim administrators to review claims when new information or new rationales for denying claims were developed on appeal.

After the rule was finalized, various industry groups and trade associations continued to lobby the new political leadership at the DOL and Congress, successfully getting review of the rule on the Department’s regulatory agenda. On October 12, 2017, the DOL published a proposed rule (“New Proposed Rule”): 1) seeking comments on whether it should delay the applicability of the 2016 changes to the rule (“2016 Rule”) that were set to become applicable on 1/1/18; and 2) requesting disability insurance claims data to inform a new regulatory impact analysis. In the New Proposed Rule, the DOL appears to recognize that its regulatory impact analysis might have failed to consider the full impact of the 2016 Amendments. These new comments and data may result in the Department rescinding, modifying or retaining the 2016 rule, whole or in part.

Members of Guardian’s Government Affairs team and the Law Department have worked closely with the American Council of Life Insurers (“ACLI”) as well as a coalition of interested parties to submit written comments on the need to delay the applicability of the 2016 Amendments. The team is also working closely with the ACLI in its efforts to provide information to demonstrate that the DOL’s prior cost-benefit analysis of the 2016 Amendments was inadequate. Furthermore, Guardian will continue to participate in industry efforts to comment on the other flawed aspects of the 2016 Amendments which are due on December 11, 2017.