

February 2018

## **BENEFITS ALERT: Disability Claim Procedures**

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The Department of Labor's new procedures for deciding disability claims under retirement and welfare plans go into effect April 1<sup>st</sup>. These new procedures place additional administrative burdens on trustees in reviewing claim information and sharing information with participants when making an adverse benefit determination. In addition, the rules give participants additional opportunities to present their claims to trustees. Finally, the new rules give participants a better chance at prevailing in litigation if a plan does not strictly follow the new rules.

**The new rules only affect those plans that make independent disability determinations, and do not affect plans that condition disability benefits on a determination from the Social Security Administration.** Plans that currently independently evaluate disability claims may wish to reconsider this practice and require a participant to be found disabled by the Social Security Administration.

### ***Administrative Burdens***

Adverse benefit determinations (both initially and on appeal) must include a more comprehensive discussion detailing the decision-making process (*e.g.*, including the reasons for disagreeing with the participant's own physician or other experts evaluating the claim). In addition, depending on the population of the county where the participant lives, a plan may be required to provide foreign language assistance (*e.g.*, via telephone) in filing claims and answering questions.

### ***Participant Opportunities***

Plans must keep participants informed of any additional evidence it is considering during an appeal and give participants an opportunity to respond to that evidence before making a final decision. This could require an ongoing dialogue with the participant, complicating the decision-making process.

### ***Litigation Issues***

Any deviation from the claims process (except as noted below) will mean that the participant is considered to have exhausted the claim procedures and may file a lawsuit right away. In that case, courts will not give deferential treatment to a plan's decision, which could hurt its chances of having its claim denial upheld. The one exception to this is if the plan and the participant are engaged in a good faith dialogue concerning the claim which causes the plan to deviate in a minor manner from its procedures, provided that the deviation does not harm or prejudice the participant.

If you have any questions or concerns about these new rules, please call us and we will be happy to review how they may impact your plan.

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