Disability Claims Regulations and the COVID-19 Pandemic

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Those involved in disability claims administration may wish to consider the potential impacts of the current global pandemic. In the current crisis, disability claims regulations may not be at the top of many peoples’ minds. However, insurers, plan administrators, and other involved in disability claims administration may wish to reevaluate the applicable Department of Labor deadlines and requirements in light of present pressures on medical personnel, persons with serious health problems, and business disruptions.

The Current DOL Guidelines

As many readers may be aware, new DOL disability regulations went into effect in 2018. These new regulations significantly revamped the administration of disability claims. (A more complete explanation of these new regulations, here).

Of particular relevance, these regulations included: (1) updated deadlines for disability claims administration and (2) consequences for missing those deadlines.

In general, the DOL regulations provide denials of claims must be made “within a reasonable period of time, but not later than 45 days after receipt of the claim by the plan.” The deadline may be extended for two 30-day periods, if “necessary due to matters beyond the control of the plan.” Appropriate notice must be given to the claimant, as specified by the regulations.

For claims appeals, adverse determinations must be made “within a reasonable period of time” but not later than 45 days “after receipt of the claimant’s request for
review by the plan.” If the plan administrator “determines that special circumstances . . . require an extension of time for processing the claim . . . written notice of the extension shall be furnished to the claimant prior to the termination of the initial” 45-day period. Further, the regulations state:

In no event shall such extension exceed a period of [45 days] from the end of the initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the plan expects to render the determination on review.

If these deadlines are missed, the current regulations provide that the claimant is generally deemed to have exhausted his or her administrative remedies. Consequently:

[T]he claimant is entitled to pursue any available remedies under section 502(a) of the Act on the basis that the plan has failed to provide a reasonable claims procedure that would yield a decision on the merits of the claim. If a claimant chooses to pursue remedies under section 502(a) of the Act under such circumstances, the claim or appeal is deemed denied on review without the exercise of discretion by an appropriate fiduciary.

**Evaluating These Deadlines in Light of COVID-19**

Claims administrators and others involved in resolving disability claims may wish to take another look at these deadlines and requirements given current circumstances. Potential problems may include:

- Difficulty obtaining in-person examinations, including Independent Medical Exams (IMEs) or Functional Capacity Evaluations (FCE), due to concerns about social distancing, stay-in-place orders, or specialist unavailability.
- Difficulty retrieving or reviewing necessary medical records from hospitals, clinics, and other medical professionals
- Disruption of claim operations caused by the spread of COVID-19, including a workforce that is unused to telecommuting, business closures, etc.

Some of these issues may delay claimants in filing claims or pursuing administrative appeals. Others may impact the ability of claim administrators to meet the DOL deadlines. While some courts have announced postponement or extensions of a number of litigation-related deadlines (including encouraging parties to cooperate in extending discovery deadlines if necessary, delaying hearings and trials, etc.), the DOL has not announced any similar relief. Also, it is unclear how courts in the future will address an inability to comply with the deadlines in the DOL regulations as a result of COVID-19.

Claim administrators may wish to consider the potential impacts on their claim processes, and evaluate the most realistic responses. Where a variance from typical practice or from the DOL regulations is deemed unavoidable, administrators may wish to consult with legal consul and consider appropriate changes to documentation practices and communication with claimants.