Texas Nonsubscribers' Webinar

New Disability Claims Procedures & Impact on Texas Nonsubscriber Claims Handling

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FEATURING…

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Background on New DOL Rules

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DECEMBER 2016
Department of Labor ("DOL") issued a Final Rule to strengthen protections for employees making disability claims.

AUGUST 2017
Trump Administration delayed this Final Rule until 4/2/18 and gave interested parties until 12/11/17 to provide comments to the DOL.

JANUARY 2018
The DOL made no further changes to the Final Rule and did not further extend the 4/2/18 deadline for compliance.

New Changes to Claims Procedures

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- Increased disclosure requirements for disability benefit denial notices;
- Employee rights to review and respond to new information before a final claim decision;
- Heightened impartiality standard for claim decision makers;
- Clarification for an employee's ability to exhaust a plan's internal remedies;
- Additional protections for rescissions of ongoing disability benefits; and
- New requirements for meeting certain foreign language standards.

Application to Texas Injury Benefit Plans

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Texas Injury Benefit Plans are welfare benefit plans that provide disability benefits.

Unlike HIPAA, the ACA and similar group health plan laws, Texas Injury Benefit Plans are not “excepted benefits” from this new Final Rule.

Technically only applies to disability benefit claims.

Penalties

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ERISA DISCLOSURES

$147 per day for nondisclosure of required information

CLAIMS PROCEDURES

Ability for employee to go directly to federal court and file suit

DOL AUDITS

Steps Plan Sponsors Should Take:

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PROGRAM DOCUMENTS

1

Amend the Official Plan Document
should be completed before 4/2/18

2

Update the Summary Plan Description ("SPD") for new hires
for Texas employees hired on or after 4/2/18

3

Communicate a Summary of Material Modifications ('SMM") to all existing plan participants
no later than 210 days from the end of the plan's 2018 plan year

Communicating Summary of Material Modifications

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HAND DELIVERY

Maintain an employee log that is signed by each affected Employee that receives a hand-delivered SMM.

FIRST CLASS MAIL

Maintain a similar employee log that confirms the date of mailing to each affected Texas employee and is signed and dated by the person(s) completing these mailings.

ELECTRONICALLY

Confirm that employees have consented to receive plan documents electronically.

- Use a process that verifies the identity of the employee (electronic Employee ID#, electronic signature, etc.).
- Notify employees of (1) the document name, (2) the significance of the document, and (3) the employee's right to obtain a paper copy of the SMM upon request.
- Have an electronic tracking system and rollout confirmation process.

Steps Plan Sponsors Should Take:

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CLAIM ADMINISTRATION

1. Update Claim Service Instructions and Conduct Training with Claims Adjusters
2. Review TPA Contracts and TPA Processes
3. Review Medical Management Contracts and Processes
4. Confirm Foreign Language Capabilities and Services
5. Ensure Adequate Separation between Initial Claims and Appeals

DOL Claim Regulations – Disclosure Requirement

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CONTRACTUAL LIMITATIONS FOR BRINGING SUIT

In the Appeal Committee's appeal determination letter, the specific date by which a lawsuit must be filed to be considered timely, according to statute of limitation language in the Plan or other Statute of Limitation date if the Plan is silent, must be included.

- Start counting the day after the date of the Appeal Committee written decision, according to your Plan's Statute of Limitation language.
- ERISA does not have a statute of limitations provision. If an ERISA plan does not provide for a statute of limitations, the courts will look to analogous state law statutes of limitations for the applicable time limit. The Texas courts apply a 4 year breach of contract statute of limitations.

DOL Claim Regulations – New Information

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REVIEW AND RESPOND TO NEW INFORMATION

Plans may not deny benefits on appeal based on new or additional evidence or rationales that were not included when the benefit was denied at the claims stage, unless the claimant is given notice and a fair opportunity to respond.

- This section is still being interpreted by industry experts and further direction will be provided if DOL Guidance is provided.
- What we understand at this time is that if a claim denial is appealed, and the Plan obtains new evidence to make a final determination, then the claimant must be provided the information and allowed a reasonable time to respond. All this must be accomplished within the DOL timeline, therefore, an extension request is recommended whenever additional information is required during the appeal review.
- We suggest that when sending the new information to the claimant, the appeal committee indicate in their letter the date by which the claimant must provide any additional information for consideration.

DOL Claim Regulations – Conflict of Interest

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CONFLICT OF INTEREST

Nonsubscriber Plans must ensure that disability benefit claims and appeals are adjudicated in a manner designed to ensure the independence and impartiality of the persons involved in making the decisions.

- When selecting the Appeal Committee's Peer Review or IME Physician, secure an executed impartiality and conflict of interest attestation from the selected physician.

DOL Claim Regulations – Communication

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COMMUNICATION REQUIREMENTS IN NON-ENGLISH LANGUAGES

Nonsubscriber benefit denial notices have to be provided in a non-English language in certain situations. Specifically, if a disability claimant's address is in a county where 10% or more of the population is literate only in the same non-English languages. The notices must contain a prominent statement in the relevant non-English language about the availability of language services.

- All Appeal Committee letters and decisions should include a section in Spanish advising the injured worker to contact you for assistance with letter translation. This section should be at the top of all letters in bold increased size font.
- Recommend establishing a quarterly review process of Texas county primary language statistics.

General Reminders

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APPEALS

- The administrative record is everything that is either relevant to or relied upon by the Plan in making the initial claim determination.
- It is important that nothing is added to or removed from the administrative record, other than claimant's submission in their appeal and information the Appeal Committee must obtain during their review.
- The claimant must be provided a copy of all records used in the review, upon their request, and free of charge.

General Reminders

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- Appeal Committee meetings can be held via conference call or in person, so long as all members are present.
- A formal decision cannot be made at an Appeal Review Committee meeting in the absence of a quorum. Each Member shall have one vote. All votes are of equal weight.
- Members must vote for or against the payment of the denied Plan benefits without abstention. Proxies are forbidden.

General Reminders

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APPEALS

- Minutes should be kept of all committee meetings.
- The Appeal Review Committee shall not discriminate against any claimant and shall comply with all applicable federal employment discrimination laws.
- These proceedings are confidential and cannot be discussed with the claimant or any other unauthorized persons.
- The Appeal Committee members shall not discuss the proceedings of any meeting outside of a formal committee meeting.

Questions may be submitted through the chat function.

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Thank you!

Texas Alliance of Nonsubscribers

Annual Meeting

May 2, 2018

Offices of Holmes Murphy – Dallas, Texas

For more information contact: emmanuel.winston@bravarro.com

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