

Congress of the United States
Washington, DC 20515

July 28, 2017

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

Re: Immediate Action Needed on Disability Claims Regulation

Dear Secretary Acosta:

We write to express our opposition to the U.S. Department of Labor's ("DOL") final rule amending private disability claims procedures (81 Fed Reg. 92316 (Dec. 16, 2016), the "Regulation") under the Employee Retirement Income Security Act of 1974 ("ERISA"). We urge the Department to take immediate action to delay and reexamine the Regulation in order to prevent irreparable harm to working Americans and the insurance industry.

Employer sponsored disability insurance provides working Americans with crucial income protection from unexpected disability due to illness or injury. Access to disability insurance depends on affordability, which is directly affected by regulatory, administrative, and litigation costs. Employers voluntarily provide disability insurance plans, and they are extremely sensitive to the effect cost increases have on their workplace and employees. Additionally, data consistently indicates that workers typically underestimate their risk of incurring a disabling illness or injury, and some two-thirds of Americans working in private industry do not have private disability income protection. For these reasons, small changes in the cost can result in disproportionately large effects on employees who choose to enroll in coverage. We believe it is a particularly inopportune time to increase the cost of disability insurance, and that it is imperative any additional burdens placed on the voluntary employer system clearly outweigh the costs they impose.

One of our primary concerns with the Regulation is that we believe DOL failed to show that there are problems with the current disability claims procedures' regulatory status. Disability insurance claims procedures are highly regulated, providing employees with many state and federal consumer protections. Claimants are already afforded a full and fair claims review process that balances the rights of claimants with the need for operational and cost efficiency. Despite the existing consumer protections, DOL elected to apply these vastly more complex regulations on ERISA-based plans, which directly conflicts with congressional intent for ERISA.¹

¹ Congress specifically intended for ERISA to "to create a system that is [not] so complex that administrative costs, or litigation expenses, unduly discourage employers from offering [ERISA] plans in the first place." *Conkright v. Frommert*, 130 S. Ct. 1640, 1644 (2010) (quoting *Varity Corp. v. Howe*, 116 S. Ct. 1065 (1996)).

The Regulation is also inconsistent with DOL's long-standing guidance distinguishing disability and medical claims. Disability claims adjudication is fundamentally different than medical claims adjudication. Furthermore, DOL failed to provide a meaningful cost benefit analysis to justify these changes, even stating in the proposed regulations that it did not have sufficient data to quantify the expected benefits.


We would also note that several of the proposed changes appear to unfairly tilt the playing field towards trial attorneys. Specifically, the Regulation appears to:

- Complicate the processing of disability claims by imposing new steps and evidentiary burdens in the adjudication of claims, and forcing plans to consider disability standards and definitions different from those of the plan;
- Impose these new complications without allowing any additional time in which to consider the claim and explain the ultimate decision to the claimant;
- Explicitly tilt the balance in court cases against plans and insurers, undoing a statutory and regulatory scheme that has worked well for decades; and
- Create perverse incentives for plaintiff's attorneys to side-step established procedures and clog the courts in search of a resolution of benefit claims.


Finally, we would note that if fewer employers offer this coverage, an additional practical result will be increased reliance on state and federal public programs (such as Social Security Disability Insurance, Temporary Assistance for Needy Families, and Supplemental Nutrition Assistance Program). Private disability insurance typically includes return-to-work assistance, which helps disabled individuals return to the workforce, and is generally more effective than the government's return-to-work programs.

We applaud this administration for its willingness to review regulations that were rushed through that will negatively impact working families. Although the Regulation 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 Regulation's new requirements. For this reason, we would appreciate your department's urgent attention to address the ill effects of the Regulation so that people will continue to have access to affordable, high quality disability income protection.

Sincerely,



David P. Roe, M.D.
Member of Congress



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Member of Congress

Pete Sessions

Pete Sessions
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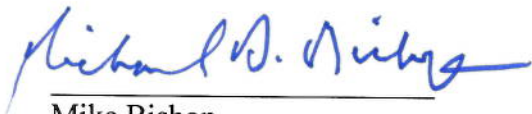
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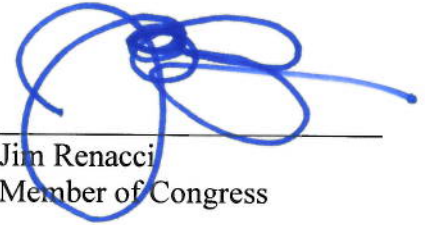
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Luke Messer
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Mike Bishop
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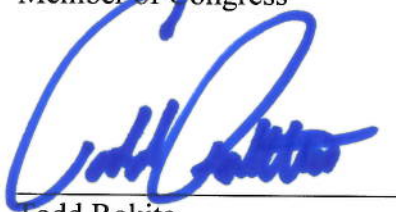
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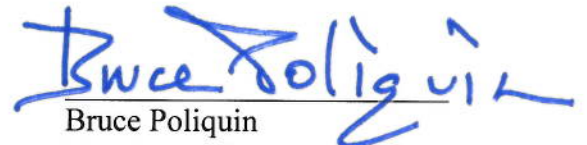
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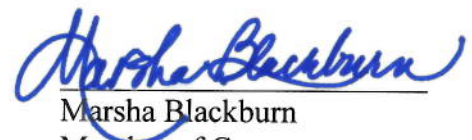
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