IVINS, PHILLIPS & BARKER
CHARTERED

DISABILITY CLAIMS PROCEDURES

March 2018 Briefing for Clients

Are We Affected?

- New rules apply to ERISA plans in which there is a *determination of disability*
  - LTD, STD plans
  - Pension plans (e.g., disability benefits, accelerated vesting)
  - Savings plans (e.g., distributions, accelerated vesting)
  - Non-qualified plans (e.g., distributions, accelerated vesting)
- New rules do not apply if plan relies on Social Security determination of disability

What Do We Need To Do?

- Ensure compliance by third-party administrators
- Update claims communication templates
  - Claim denial letters
  - Appeal denial letters
- Update written claims procedures
  - Booklet
  - Plan document/SPD

When?

- New rules are applicable April 1, 2018
  - First priority is to assess pending claims
    - Ensure that TPAs comply with new procedures
    - Ensure that participant communications are updated
  - Second priority is to update plan documentation
    - Claims procedures
    - Plan docs
    - SPDs
- After several delays, the April 1st deadline will stick

DISABILITY CLAIMS: DETAILS

Update Claims Procedures

- Claims Procedures: New Process Required
  - Right to Review and Respond to New Information
    - Must give claimant notice and opportunity to respond to new information or rationales, prior to final appeal decision
    - Employer still must make decision within 45 days of appeal
  - Rescission of Coverage
    - Must be treated as adverse benefit determination

Update Vendor Contracts

- Vendor Contracts – New Conflict of Interest Criteria
  - Claims adjudicator and individuals serving as claims adjudicator cannot be hired or compensated based on likelihood of denying claims
    - Modify vendor contracts to require representation that there are no financial incentives tied to claim denials

- Vendor Contracts – Liability for Compliance
  - Review vendor contracts to confirm that plan vendors are responsible for compliance with the final rules
  - Verify who will update claims procedures and denial letters

Update Claims Communications – Initial Denial

- Claims Communications – New Disclosures Required for Benefit Claim Denials
  - Must be provided in "culturally and linguistically appropriate manner", using ACA standard
    - Translation services may be needed
  - Explain *why* benefit was denied
    - Must newly explain basis for disagreeing with medical or vocational experts who evaluated claimant or were consulted by plan
  - Include *internal guidelines* or protocols used to deny a claim

Update Claims Communications – Appeal Denial

- Claims Communications – New Disclosures Required for Appeal Denials
  - Must be provided in "culturally and linguistically appropriate manner", using ACA standard
    - Translation services may be needed
  - Must include notice of *limitations period* for filing suit, in final denial letter, consistent with recent case law

Consequences of Failure to Comply

- If plans do not adhere to claims processing rules…
  - Claimant may be deemed to have exhausted administrative remedies (expanded circumstances in which exhaustion is deemed)
  - Claimant may go directly to court
  - Claimant may be entitled to *de novo* review

- Claims procedures must be part of SPD, which must be provided upon participant/beneficiary or DOL request, with penalties up to $110 per day