Full speed ahead: Changes to disability claims procedure regulation take effect April 1

By Claire P. Rowland

On January 5, the Department of Labor (DOL) announced that implementation of the final regulation (Final Rule) governing disability claims procedures would not be further delayed. Accordingly, the Final Rule will take effect on April 1, 2018. Plan sponsors must act now to assure timely compliance.

The Final Rule

By way of background, the Final Rule amends the claims procedure requirements for ERISA-covered benefit plans providing disability benefits. The DOL published the Final Rule in the Federal Register on December 19, 2016, intending that it would apply to all claims filed on or after January 1, 2018. But on November 24, 2017, the DOL announced a 90-day implementation delay to April 1, 2018. Many speculated that the delay might lead to substantive changes in the procedures, but the January 5 DOL announcement has ended those discussions.

Among other requirements, the Final Rule imposes new disclosures to be included in benefit denial notices, enhanced rights of review, independent and impartial claims reviews, and culturally and linguistically appropriate notices. For a more detailed discussion on the new requirements, please see our October 3, 2017, Benefits Law Alert, “The final rule and disability claims procedures: Are you ready? Do you have to be?”

Plan documents and forms must be updated to comply with the Final Rule

If a plan fails to meet the new procedural requirements under the Final Rule, claimants will be deemed to have exhausted the administrative remedies under the plan. As a result, claimants could immediately file suit in federal district court, and the court will not be required to defer to the plan sponsor’s claim determination.

Plan sponsors who have not yet done so should consult with their counsel, third-party administrator, and other service providers or vendors in order to identify documents that will need to be updated by April 1. Further, sponsors should review and amend, as necessary, all claims procedures, health and welfare plan documents, retirement plan documents, summary plan descriptions, disability claims and appeals denial notices and any other forms and documents.
containing claims procedure information. Finally, they will need to communicate any changes to participants.

If you have questions about the Final Rule, including the process to review and update your plan documents, procedures and forms, please contact your Nixon Peabody benefits attorney or:

- Claire P. Rowland at crowland@nixonpeabody.com or (415) 984-8338
- Jenny L. Holmes at jholmes@nixonpeabody.com or (585) 263-1494
- Eric R. Paley at epaley@nixonpeabody.com or (585) 263-1012
- Brian Kopp at bkopp@nixonpeabody.com or (585) 263-1395
- Christian Hancey at chancey@nixonpeabody.com or (585) 263-1147
- Thomas J. McCord at tmccord@nixonpeabody.com or (617) 345-1337
- Dennis Bouxsein at dgbouxsein@nixonpeabody.com or (312) 977-9204
- Yelena Gray at yfgray@nixonpeabody.com or (312) 977-4158
- Paul B. Holmes at pbholmes@nixonpeabody.com or (312) 977-4488
- Sarah K. Ranni at sranni@nixonpeabody.com or (716) 848-8240