

# 2018 ERISA Disability Claim regulation changes.

New York Life Group Benefit Solutions

## Your questions answered:

**Q: Have Group Benefit Solutions' claims procedures been updated to comply with the changes applicable to disability claims filed on or after April 1, 2018?**

**A:** Yes. Group Benefit Solutions has completed its review and made changes to all relevant disability claim and appeal procedures, letters, forms, training materials and other claims management collateral. Our claim and appeal procedures are up to date and comply with the new April 1st disability requirements.

To view the changes to disability claims filed on and after April 1st, see our *"Summary of the ERISA Disability Regulation and New York Life's Operational Readiness"* document.

For your *insured* plans, Group Benefit Solutions' revised disability claims procedures, applicable to disability claims filed on or after April 1, 2018, can be found in our *"Insured Disability Claim Procedures"* document. These procedures are in addition to the existing disability claim procedures currently appearing in the *"ERISA Supplemental Information"* document previously provided to you with your insurance certificate(s). For Administrative Services Only (ASO) self-funded plans, please see below.

**Q: To which claims do the new disability claim procedures apply?**

**A:** Disability claims filed before April 1st are not impacted by the new procedures. New disability claims, filed on and after April 1st, are impacted and will have the new disability procedures applied to them. Each claim's original filing date determines which procedures apply (e.g. new or old procedures). The procedures applying on the claim filing date will apply throughout the life of the claim, including throughout the appeal process.

**Q: Which plans are affected by the new disability claim procedure changes?**

**A:** More than just disability plans are affected because it is the nature of the claim that determines "disability" claim status, not the plan type. For example, life/death/accident benefit plans may also require application of the new disability claim procedures. Consider a life plan containing waiver of premium features. That plan must apply the new disability claim procedures to all waiver claims filed on or after April 1st because waiver is determined on the basis of a finding of "disability." As you can see, in addition to your disability plans, other plans may also need the revised disability claim procedures added to, and described in, your summary plan description documents (SPDs). For this reason, our new claim procedures specifically indicate applicability only to "disability" claims "filed on or after April 1st."



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**Q: As of April 1st, how many different claim procedures apply under any given plan?**

**A:** As many as three different claims procedures may apply. Why? Group Benefit Solutions is not applying the new disability procedures universally to all disability claims. Instead, Group Benefit Solutions' procedures distinguish between disability claims filed before April 1st, and disability claims filed on or after April 1st. For example, assume you have a life insurance plan with waiver of premium features and your "plan year" for 2018 runs January 1st through December 31st. Under such a plan, three types of claims can arise – "non-disability" claims (i.e., death claims), waiver of "disability" claims filed before April 1st, and waiver of "disability" claims filed on or after April 1st. For the death claims, no matter when they're filed, the traditional "non-disability" benefit claims procedures apply. These procedures remain unchanged and are the same procedures that have applied for years. For all "disability" claims filed before April 1st, the old claims procedures will continue to apply. But, for all waiver claims filed on and after April 1st, the new "disability" claims procedures apply. Similarly, assume you have a long-and/or short-term disability plan with disability claims filed before April 1st and disability claims filed on or after April 1st, those two categories of "disability" claims will have different disability procedures applied.

Please keep this in mind when you are drafting and/or updating your SPDs and/or summary material modifications (SMMs). It is quite possible that, for the time being and into the future, two or three types of procedures may need to be maintained and described as applying to your various plan claims. Our revised disability procedures, therefore, indicate application only to disability claims filed on or after April 1, 2018.

**Q: When and how should I communicate the new claims procedures?**

**A:** Group Benefit Solutions cannot provide you with legal advice and encourages you to consult your own advisers. Generally, ERISA summary material modifications to summary plan descriptions are to occur within 210 days after the end of the plan year in which the changes take effect. However, the materials accompanying these FAQs may be immediately used in supplementing and/or creating SPDs and may be distributed by your plan. We encourage you to do so.

**Q: Will my insurance certificate be updated automatically? Upon renewal?**

**A:** No. Group Benefit Solutions will not automatically, or upon renewal, update or mail revised "ERISA Supplemental Information" documents for use with your current insurance certificates. Instead, please see our revised "Insured Disability Claim Procedures" document and use it to supplement your current SPDs for each New York Life Group Benefit Solutions plan containing disability claims. You may use this information now, as needed. However, if in the future you make changes to your plan design that otherwise require revised certificates, we can, upon request, provide entirely new and revised ERISA Supplemental Information materials that include all types of applicable procedures.

**Q: My insurance policy contains an ERISA "Amendatory Rider," will Group Benefit Solutions issue amendments to the rider?**

**A:** Yes. Group Benefit Solutions intends to issue amendments removing the riders from all of your policies in the near future. Your ERISA amendatory rider will be removed from all policies regardless of whether or not the policy contains disability claims (e.g., critical illness, accident, etc.). Once removed, the rider will not be replaced. Group Benefit Solutions will issue amendments as they become available. In the meantime, Group Benefit Solutions will apply the appropriate ERISA claims procedures to all claims, including disability claims filed on or after April 1st as outlined in our "Insured Disability Claim Procedures" document.

**Q: Whose responsibility is it to communicate the revised procedures to employees?**

**A:** It is the responsibility of the employer (Plan Administrator) to incorporate the revised claims procedures into their benefit plan communications and distribute them to affected participants, including determining the date by which communication is required to be done.

**Q: Any other changes I should be aware of?**

**A:** Yes. As of April 1st, Group Benefit Solutions posted its disability claims "Policies and Procedures" (proprietary Group Benefit Solutions disability claim practice procedures) on myNYLGBS.com. Appeal affirmation letters, for claims filed on or after April 1st, inform claimants as to the location of this information on myNYLGBS.com; we may also provide it to them in paper form.

**Q: What is the impact to Non-ERISA plans?**

**A:** Non-ERISA plans, as reported to us by the employer, are not required to take any action. However, Group Benefit Solutions intends to apply the new disability claims procedures to non-ERISA plans to the extent Group Benefit Solutions determines they can apply. For example, if a disability claim is filed April 1, 2018, Group Benefit Solutions may provide the claimant with an opportunity to review and respond to our proposed denial before it is finally made. But, we would not provide a denial notice that indicated the claimant had a right to sue under ERISA, etc.

**Q: What if my disability plan is self-funded and Group Benefit Solutions administers my claims on an ASO basis?**

**A:** The claims procedure changes apply to self-funded disability plan(s) too. However, depending upon the type of ASO claim services you purchased from Group Benefit Solutions, how they affect the services you receive from Group Benefit Solutions, may differ. Please consult your Group Benefit Solutions ASO claim consulting agreement to determine your service level/type.

**Q: What do all ASO disability plans administered by Group Benefit Solutions need to know?**

**A:** Contractual Limitations Period. If your plan document/SPD contains a contractual limitations period, for disability claims filed on and after April 1st, Group Benefit Solutions will apply it, calculate the applicable expiration date and disclose that date in each appeal denial letter. However, if your plan document/SPD does not contain a contractual limitations provision, Group Benefit Solutions will inform the claimant that no such contractual limitation is contained in the plan and no expiration date will be calculated and disclosed. If your Plan Administrator would like us to handle the issue differently, please contact your Account Manager, in writing, and supply us with your alternative written directions. We encourage you to review this issue with your advisers and consider adding a contractual limitations provision to your plan if it does not contain one. If you add or change your plan's limitations provision, please let us know as soon as possible so that we may apply it appropriately in affected appeal denial letters.

Foreign Language Requirements. Group Benefit Solutions intends to offer a notice of the availability of foreign language services in all denial letters in the four languages indicated by the revised disability regulations – Spanish, Chinese, Tagalog and Navaho.

**Q: What do I need to know if Group Benefit Solutions is the “named fiduciary” for the administration of my ASO disability plan claim appeals?**

**A:** If you have contracted for *fiduciary* ASO claim services from Group Benefit Solutions, Group Benefit Solutions will handle all the claim changes and apply them when required. Please see our “*ASO Disability Claims Procedures (New York Life as Named Fiduciary Claim Administrator)*” document which reflects Group Benefit Solutions as the named claim fiduciary.

**Q: What do I need to know if Group Benefit Solutions is the “non-fiduciary” claim administration of my ASO disability plan?**

**A:** If you have contracted for non-fiduciary ASO claim services from Group Benefit Solutions, impact of the new changes may depend upon the level of service you have with us. Please see our “*ASO Disability Claims Procedures (New York Life as Non-Fiduciary Claim Administrator)*” document which reflects your Plan Administrator as named claim fiduciary, and consider the following:

If Group Benefit Solutions only handles your initial claims and does not administer your claim appeals, then Group Benefit Solutions will apply the required changes during initial claim administration only and you will remain responsible for managing any changes applicable during the appeal process.

If Group Benefit Solutions manages your initial claims and manages and makes recommendations to your plan regarding claim appeals, then:

For disability claims filed before April 1st, there is no impact to current administration. The existing claim procedures apply and the current process remains in place (e.g., Group Benefit Solutions makes a recommendation at approximately the 35th day and shares it with the plan).

For disability claims filed on and after April 1st, you may now need to interact more frequently with Group Benefit Solutions during the claim process.

Right to Review and Respond. When the new “review and respond” requirement applies to a claim on appeal, Group Benefit Solutions may reach out to the plan more than once before an appeal denial decision is completed. Decision making timeframes may not be extended during this internal communication process between Group Benefit Solutions and the plan.

Strict Adherence Requirement (Deemed Exhaustion). Generally, if Group Benefit Solutions receives any allegation that its procedures do not “strictly adhere” to the regulations, Group Benefit Solutions will respond within 10 days to the claimant. However, depending upon the nature of the allegation received, Group Benefit Solutions may find it necessary to contact you, as the plan’s “named fiduciary,” to discuss the proposed response.

The information contained herein does not constitute legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. New York Life Group Benefit Solutions assumes no responsibility for any circumstances arising out of the use, misuse, interpretation or application of any information supplied in this publication.

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