

Do You Have An ERISA Disability Claim? Print This Article, and Take It to Your Doctor

A Basic Guide to ERISA Disability Claims for Physicians and Healthcare Professionals

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It should come as no surprise that doctors want to practice medicine. Doctors do not want to complete claims forms or be dragged into litigation. No one knows this better than ERISA disability insurance companies. In fact, among the many strategies used to stack the odds in their favor, ERISA disability insurers will often send multipage, complex, and time-consuming forms to claimants. Then, the insurers will demand that they be promptly returned under penalty of a claim being denied or terminated. There is one bright spot in all of this. In the typical ERISA disability case, a physician can be a full, helpful, and significant participant while being only minimally inconvenienced. Below is *A Basic Guide to ERISA Disability Claims for Physicians and Healthcare Professionals*:

1. **No Depositions: A Physician Will Not Be Deposed.** Typically, in an ERISA disability insurance case, a physician will not be called upon to provide a deposition. An ERISA disability claim involves a review of the paper medical file, treatment notes, opinion statements, test results, medical narratives, and other medical and occupational documentation. Generally, all federal courts in the United States restrict pretrial discovery in an ERISA case, and strictly limit the court's review to the paper record. As such, a physician should know that he or she will not be asked to provide either a discovery of *de bene esse* deposition (*i.e.*, a trial testimony deposition), become a subpoenaed witness, or testify at trial.
2. **No Phone Interviews: A Physician Does Not Have to Speak With Your Insurance Company.** A physician is under no legal obligation to speak with the insurance company's representative, peer reviewers, or in-house physicians, particularly if the claimant is not permitted to be present or on the call. A physician will not be subject to a subpoena issued by an insurance company or an insurers' lawyers in the course of an ERISA disability insurance case.
3. **Reasonable Payment: A Physician Should Be Compensated for Administrative Time.** A physician is often not paid for completing forms, providing medical narratives, or providing sworn affidavits as a covered health insurance claim. Many physicians will waive these charges since they realize their clients are unable to work given the condition for which they are treating and have no income. If not waived, a physician should be able to

charge and expect reasonable compensation from a patient for providing their expertise and medical documentation in support of disability claim. A corollary of this principle is that a physician's office should also be able to charge a patient for the costs in copying a medical record or medical file.

4. ***Help Is Truly Needed: A Physician's Assistance is Key to Supporting a Valid Disability Claim.*** Physicians help patients. Physicians and healthcare workers are professionals whose vocation is to serve others. Their profession is devoted to helping people. Consistent with this ethic, a physician's assistance is truly required in the processing of every ERISA disability claim. An insurer (even a good insurer) will not accept a disability claimant's word that he or she is unable to work. An ERISA disability claim must be supported by a physician's professional medical opinion, often through a required Attending Physician (APS) Form. Without the physician's support, the claim will experience difficulty once processed by the insurer.
5. ***Objective Medical Tests Are Required: A Physician Should Be Aware That Insurers Look to Test Results.*** ERISA disability insurance companies are forever increasing the proof requirements necessary to approve disability claims. Frequently, an insurer will demand objective proof of a medical condition or objective proof of an inability to work on a full or part-time basis. Where appropriate, a course of treatment which includes blood chemistry panels, imaging studies, functional capacities evaluations, comprehensive exams, neuropsychological or cognitive assessments, or other objective measures of illness or injury is extremely helpful for supporting an ERISA disability insurance claim.
6. ***Deadlines Are Set By The Insurance Company: A Physician Should Be Aware That the Insurer Sets The Deadlines, Not the Patient.*** A physician should know that the guidelines in an ERISA case are set by the United States Department of Labor and that an insurer is under certain federal requirements for the timely processing of claims. Most insurers will seek the return of requested information in one of the following time periods, 21 days, 30 days, 45 days, or 180 days. All requests for information are accompanied by a due date. A physician should know that the patient has almost zero control over these due dates, and certain insurers are loath to ever grant extensions.
7. ***What Can The Patient Do For You? A Physician Should Be Able to Communicate the Physician's Own Needs.*** A physician should have the freedom to explain to the patient that he or she needs extra time to complete the paperwork or that a patient must schedule an appointment in order to complete forms. This is not a one-sided relationship. A physician can reasonably be expected to have certain procedures in place and that the patient will follow them. A patient should always inquire about the physician's needs.

8. ***Please Read the Disability Forms Carefully: A Physician Is the Best Person Able to Opine on Disability.*** ERISA disability claims forms are notoriously ambiguous. Often these forms will request that a physician treating a *physical* condition opine on a patient's *psychological* status and vice-versa. Please carefully review what the question is asking. If there are no specific directives, then answer each question that is appropriate as if the insurer is inquiring about the availability for work on a full-time basis. In other words, the question becomes is your patient able to perform the task described 5 days in a row, 40 hours per week, 50 weeks per year without interruption or time off to tend to the medical condition.

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