SB 46-1
(LC 568)
2/19/21 (TSB/ps)

Requested by SENATE COMMITTEE ON LABOR AND BUSINESS

PROPOSED AMENDMENTS TO
SENATE BILL 46

On page 1 of the printed bill, delete lines 6 through 28 and delete pages 2 through 5 and insert:

"SECTION 2. (1) As used in this section:

"(a) 'Adverse benefit determination' means an insurer's:

"(A) Denial, reduction or termination of a benefit that is available under a disability income insurance policy, including a denial, reduction or termination that follows a determination that a person is not eligible to participate in the disability income insurance policy;

"(B) Failure to provide or pay, in whole or in part, for a benefit that is available under a disability income insurance policy, including a failure that follows a determination that a person is not eligible to participate in the disability income insurance policy; or

"(C) Cancellation or discontinuance of coverage under a disability income insurance policy with retroactive effect, unless the cancellation or discontinuance occurs because of a failure to timely pay required premiums or contributions toward the cost of coverage.

"(b) 'Claim procedure' means an insurer's procedure for filing benefit claims, providing notice of benefit determinations and appealing adverse benefit determinations.

"(2) An insurer that offers, issues or renews a disability income insurance policy in this state may not:

"(a) Unduly delay, inhibit or hamper a claimant's submission of a claim for benefits under the disability income insurance policy or the insurer's processing, consideration or determination of the claim;

"(b) Require a claimant to request more than two appeals of an adverse benefit determination to exhaust the insurer's appeals process; or

"(c) Require mandatory arbitration of an adverse benefit determination unless the arbitration:

"(A) Constitutes one of the appeals described in paragraph (b) of this subsection and complies with the requirements that apply to an appeal; and

"(B) Does not preclude the claimant from challenging the result of the arbitration under applicable law.

"(3) An insurer that issues or renews a disability income insurance policy in this state shall:

"(a) Describe and provide to each person eligible for benefits under the policy a written summary of all claim procedures, timelines and deadlines that apply to claims under the policy.

"(b) Permit an authorized representative of a claimant to act on the claimant's behalf in making a claim or appealing an adverse benefit determination, subject to the insurer's reasonable determination as to whether the claimant has in fact authorized the representative to act on the claimant's behalf.

"(c) Establish and administer processes and safeguards to ensure and verify that the insurer:

"(A) Determines benefit claims in accordance with the provisions of the policy and all other applicable laws, regulations and procedures; and

"(B) Applies policy provisions consistently among claims.

"(d) Determine and adjudicate all claims and appeals in a manner

that ensures the independence and impartiality of the individuals who make the determinations or adjudications.

"(e) Notify each claimant of an adverse benefit determination not later than 45 days after receiving a claim, except that an insurer may extend the time within which the insurer may give the notification for a maximum of two additional 30-day periods if the insurer determines that the insurer needs additional information from the claimant or the delay is the result of circumstances beyond the insurer's control and:

"(A) The insurer notifies the claimant of each extension before the expiration of the initial 45-day period or the first extension, as appropriate; and

"(B) The insurer explains, describes or states, as appropriate, in each notification of an extension:

"(i) The standards that apply to the determination;

"(ii) Any unresolved issues that prevent a determination;

"(iii) Any additional information the claimant must provide for the determination, giving a date not later than 45 days from the date of the notification for the claimant to provide the information; and

"(iv) The date by which the insurer expects to make the determination.

"(f) Notify the claimant in writing, by printed or electronic means, of the details of each adverse benefit determination, including any adverse benefit determination that follows an appeal of a previous adverse benefit determination. The Director of the Department of Consumer and Business Services may adopt rules that specify:

"(A) The form and format of the notification; and

"(B) Contents of the notification that include, at a minimum:

"(i) The specific reason for the adverse benefit determination;

"(ii) The specific policy provisions on which the insurer based the adverse benefit determination;

"(iii) A description of any additional information the claimant must provide to complete a claim or appeal and an explanation of why the information is necessary;

"(iv) A description of the insurer's claim procedures and time limits within which a claimant must request an appeal, along with a statement that the claimant has a right to bring a civil action following the adverse benefit determination once the claimant exhausts the claimant's remedies under the insurer's appeals process;

"(v) An explanation of the insurer's determination that includes, if applicable:

"(I) Reasons why the insurer did not agree with or follow advice, opinions or recommendations from vocational consultants or health care providers who evaluated or treated the claimant and that the claimant included in the claim, or why the insurer disagreed with a determination by the United States Social Security Administration; and

"(II) The advice, opinions and recommendations of the insurer's medical or vocational consultants, even if the insurer did not rely on the advice, opinions or recommendations in making the adverse benefit determination;

"(vi) Specific summaries or citations of the insurer's claim procedures, internal rules, guidelines, protocols, standards or other criteria on which the insurer relied in making the adverse benefit determination, or a statement that the insurer does not have or did not use specific claim procedures, rules, guidelines, protocols, standards or other criteria; and

"(vii) A statement that explains the claimant's reasonable right of access, upon request and free of charge, to copies of all documents, records and other information that are related to the claim and the adverse benefit determination, along with procedures for obtaining the

documents, records and other information.

"(g) Establish and maintain a claim procedure under which a claimant has a reasonable opportunity to appeal an adverse benefit determination under conditions that ensure a full and fair consideration of the claim and the adverse benefit determination. The insurer in the claim procedure shall give the claimant:

"(A) At least 180 days after the date of the adverse benefit determination within which to appeal;

"(B) An opportunity to submit written comments, documents, records and other information related to the claim;

"(C) Upon request and free charge, reasonable access to and copies of all of the insurer's documents, records and other information related to the claim;

"(D) Due consideration of the comments, documents, records and other information the claimant submits during the appeal, without regard to whether the claimant submitted the comments, documents, records or other information for the initial determination;

"(E) A proceeding in which the official that conducts the proceeding:

"(i) Does not defer to the adverse benefit determination;

"(ii) Is not the official who made the adverse benefit determination or a subordinate of the official; and

"(iii) Consults with a health care provider who has appropriate training and experience to make an informed medical judgment concerning the claim, if a determination of the claim requires a medical judgment, but who is not a health care provider who participated in the adverse benefit determination, or a subordinate of the health care provider; and

"(F) The identities of medical providers or vocational consultants from whom the insurer obtained advice, opinions or recommendations

concerning the adverse benefit determination, even if the insurer did not rely on the advice, opinions or recommendations in making the adverse benefit determination.

"(4)(a) If in an appeal of an adverse benefit determination an insurer intends to consider evidence or a rationale that the insurer did not previously consider in making the adverse benefit determination, the insurer shall, as soon as possible and before making a determination in the appeal, notify the claimant of the evidence and the rationale and in the notification provide the claimant with copies of the evidence and an explanation of the rationale, free of any charge. The insurer's notification must allow the claimant a reasonable time within which to respond to the evidence or rationale.

"(b) An insurer shall complete an appeal of an adverse benefit determination and notify the claimant of the insurer's determination of the appeal not later than 45 days after receiving the claimant's request for the appeal, except that the insurer may extend for not more than an additional 45 days the time within which the insurer may complete the appeal if the insurer:

"(A) Determines that special circumstances require the delay; and

"(B) Gives the claimant:

"(i) Notice of the extension before the expiration of the initial 45-day period;

"(ii) An explanation of the special circumstances that caused the delay; and

"(iii) A date by which the insurer expects to make and give the claimant notice of a determination of the appeal.

"(5) The period of time within which an insurer must make a determination on a claim or an appeal begins when the insurer receives notice of the claim or appeal, even if the notice does not include all information necessary to make a determination with respect to the

claim or appeal. If the insurer must extend the period within which the insurer must make a determination because the claimant failed to submit necessary information, the period is tolled from the date on which the insurer notifies the claimant of the need for additional information until the date on which the claimant responds to the notice.

"(6)(a) Except as provided in paragraph (b) of this subsection, a claimant has exhausted the claimant's administrative remedies with respect to a claim or appeal of an adverse benefit determination if the insurer does not adhere strictly to the requirements of this section.

"(b) An insurer's failure to adhere strictly to the requirements of this section that is de minimis and does not or is not likely to cause prejudice or harm to the claimant does not constitute a claimant's exhaustion of the claimant's administrative remedies with respect to a claim or appeal if the failure is not part of a pattern or practice of failures by the insurer and the insurer demonstrates that the failure:

"(A) Was for good cause or was a result of circumstances beyond the insurer's control; and

"(B) Occurred in the context of an ongoing, good-faith exchange of information between the insurer and the claimant.

"(c) A claimant may request from the insurer a written explanation of the failure, which the insurer must provide within 10 days after receiving the request. In the explanation, the insurer must specify the basis for any assertion by the insurer that the failure does not constitute an exhaustion of the claimant's administrative remedies with respect to the claim or appeal.

"SECTION 3. Section 2 of this 2021 Act applies to a policy of disability income insurance that an insurer issues or renews on or after the operative date specified in section 4 of this 2021 Act.

"SECTION 4. (1) Section 2 of this 2021 Act becomes operative on January 1, 2023.

"(2) The Director of the Department of Consumer and Business Services may adopt rules and take any other action before the operative date specified in subsection (1) of this section that is necessary to enable the director, on and after the operative date specified in subsection (1) of this section, to undertake and exercise all of the duties, functions and powers conferred on the director by section 2 of this 2021 Act.

"SECTION 5. This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.".
