**MEMORANDUM**

**TO:** Medical Providers who Treat Adults with Disabilities

**FROM:** Richard Weishaupt, Senior Attorney, Community Legal Services

Email: [rweishaupt@clsphila.org](mailto:rweishaupt@clsphila.org); telephone: (215) 981-3773

**DATE:** January 17, 2020

**RE:** **Proposed Social Security Regulations to Conduct Continuing Disability Reviews More Frequently – COMMENTS DUE JANUARY 31, 2020**

In November 2019, the Social Security Administration (SSA) proposed a new rule that would change how often most people receiving Social Security disability benefits, including SSI, would have their disabilities reviewed. Older adults and people with serious behavioral health conditions would be particularly targeted by the new rule.

SSA is collecting comments on the rule until **January 31, 2020**. It will be required to read and consider every comment submitted before it can make the rule final. Comments can be submitted here: <https://www.federalregister.gov/documents/2019/11/18/2019-24700/rules-regarding-the-frequency-and-notice-of-continuing-disability-reviews>. (The comment page includes an old deadline of January 17, 2020 but SSA has extended that deadline to January 31.)

Medical providers have unique expertise and moral authority to speak out against this proposal. We hope you will make a comment and thank you in advance for your interest on this important subject. This comment guide provides some background on the proposed rule and some template comments that you can adapt and submit by the deadline.

Please note that federal commenting software will screen out comments that do not have original content, so including your own experiences and perspective is vitally important.

**BACKGROUND**

**What Does The Proposed Rule Do?**

It can take years for people to qualify for benefits from SSA based on disability. Once they qualify, they face continuing disability reviews (CDRs), or routine reviews to see if they still meet the disability standard. Current SSA rules state that if medical improvement is expected (for example, for people who have had organ transplants), SSA will review the claim in six to 18 months. If medical improvement is possible, SSA reviews the claim every three years. If medical improvement is not expected, SSA reviews the claim every five to seven years.

Under the proposed rule, SSA would review most people every two years instead. **SSA plans to conduct an additional 2.6 million reviews.**

SSA says it will “save” $2.6 billion from disability beneficiaries they project to be terminated under these accelerated and increased CDRs. They refuse to reveal how many will be cut off altogether.

**SSA projects that there will be $1.8 billion in increased administrative costs in conducting these additional reviews.**

**Who Will Be Affected?**

The proposed rule would disproportionately harm adults nearing retirement age. There are two ways that adults can get disability benefits: (1) they can meet some narrow medical criteria, called the Listings, or (2) they can show that they cannot work.  Most older adults get benefits the second way, because as people with disabilities age, it becomes much more difficult to work.  The proposed rule specifically targets people who get benefits that second way, so **older adults who cannot work because of their disabilities would be disproportionately harmed.**

The proposed rule further targets adults with certain serious behavioral health conditions, including major depressive disorder, bipolar disorder, generalized anxiety disorder, and panic disorder.

Finally, SSA also proposes to **target people who have disabilities due to certain cancers without regard to the disease burdens that they still experience.**

SSA has provided little or no medical or scientific bases for these targets and reviews. It has also said that it will target further disabilities for more frequent reviews in the future.

**What’s Wrong with More Frequent CDRs?**

Qualifying for disability benefits is difficult and stressful. It is not uncommon for eligible people to apply several times, and wait for years, to qualify. The test is so strict and onerous that more than 60% of applicants for disability benefits get denied at the initial application stage.

The CDR process can be equally hard to navigate, and very few people with disabilities have legal advocates to assist or represent them because of restrictions on attorney fees in CDR cases.

People undergoing full medical reviews have to fill out extensive paperwork and provide medical evidence. In many cases, they also have to be examined by SSA doctors. If they miss a step, their benefits can be cut off for non-cooperation. Throughout the process, the threat of losing needed income hangs over their heads. For people with conditions like anxiety or depression, the process exacerbates their disabilities. **More frequent disability reviews makes the process even worse.**

Even more troubling, in recent years, SSA has regularly failed to follow the law for CDRs. In conducting CDRs, the Social Security Act requires SSA to look at whether people have “medically improved” – a very specific legal standard. Advocates, like those at Community Legal Services, have been showing SSA case evidence for years that demonstrates that SSA staff does not follow the law for CDRs. **Adding 2.6 million more CDRs means that SSA has that many more opportunities to disregard the law.**

**TEMPLATE COMMENTS**

January 17, 2020

**Via www.regulations.gov**

Andrew Saul

Commissioner

Social Security Administration

6401 Security Boulevard

Baltimore, MD 21207

# Re: Notice of Proposed Rulemaking on Rules Regarding the Frequency and Notice of Continuing Disability Reviews, 84 Fed. Reg. 36588 (November 18, 2019), Docket No. SSA-2018-0026

I *[We]* write in opposition to the Social Security Administration’s (SSA’s) proposed rule to conduct many continuing disability reviews (CDRs) more frequently. I *[We]* are particularly concerned about the proposed rule’s impact on older adults and people with serious behavioral health conditions.

*[Please insert background information about who you are. Here, you might include information about your medical education, the nature of your practice, the patient population you serve, the community in which you work, and/or the institution at which you practice.]*

1. **More Frequent CDRs Will Be Burdensome.**

People with disabilities often struggle to get by. They are disproportionately at risk of experiencing homelessness compared to the population as a whole. If they are unable to stay connected work due to their disabilities, they face the persistent threat of eviction, utility shut-off, and hunger. Interruption in health insurance coverage – particularly for people who rely on Medicaid, for which administrative burdens can be daunting – can put their lives at risk.

Disability benefits are a lifeline for people with disabilities, because they provide income that can replace lost wages due to inability to work. They also help to pay for expenses like special diets, medical copayments, and transportation to medical appointments that are common among people with disabilities. And they ensure that people receive stable, consistent Medicaid coverage.

Unfortunately, applying for disability benefits is not easy. People with disabilities must navigate a complex bureaucratic process that denies 60% of applicants at initial application and is fraught with delays.

*[Please insert discussion of the challenges that you see your patients experience in trying to access disability benefits. Specific, anonymized examples would be very compelling, if available.]*

Once people qualify for disability benefits, keeping the benefits is just as difficult. CDRs require beneficiaries to fill out extensive paperwork and provide medical evidence that may be difficult to track down. In many cases, they have to be examined by SSA doctors on top of many other medical appointments. If they miss a step, their benefits can be cut off for non-cooperation. Throughout the process, the threat of losing needed income hangs over their heads.

I am *[we are]* very concerned that this proposed rule will cause significant benefit interruptions to otherwise eligible people, due to their inability to cooperate with the complicated bureaucratic process every two years. *[Please insert a sentence or two about how losing disability benefits will affect the patients you care for.]*

1. **More Frequent CDRs Will Force People With Disabilities To Wait Even Longer For Benefits.**

People already wait too long to qualify for disability benefits. A majority of applicants are denied disability benefits at application. Even if they are eventually found eligible for SSI, they often must wait up to two years – and in a few cases, even longer – to prove to an administrative law judge that they meet SSA’s disability rules.

*[Please insert discussion of the challenges that you see for people who are waiting to prove eligibility for disability benefits. Specific, anonymized examples would be very compelling, if available.]*

More frequent CDRs will slow down the process for everyone, by pushing more people into the pipeline for administrative hearings. People cannot afford to wait any longer than they already do for disability benefits.

1. **SSA’s Decision to Target Certain People for More Frequent CDRs Is Arbitrary and Capricious.**

*[Note: “Arbitrary and capricious” is a legal term of art that creates a basis to sue to invalidate the proposed rule if it goes forward.]*

The proposed rule will require all adults to be subject to more frequent reviews if they did not meet SSA’s very narrow medical criteria (called the Listings) when their disability cases were first decided. They will be subject to these reviews even though they were able to prove just two years earlier that they were unable to work due to the severity of their impairments, their age, and other factors.

Subjecting all adults to this heightened scrutiny *en masse* – regardless of the nature and severity of their disabilities, merely based on how their cases were decided – is a textbook example of arbitrary and capricious rulemaking and is without medical or scientific support. It threatens the stability of people with disabilities by forcing them through additional bureaucratic processes, regardless of their medical prognoses.

SSA’s approach is particularly nonsensical because many people who will targeted by the proposed rule will be nearing retirement age. SSA states that a goal of the proposed rule is to incentivize individuals with disabilities to return to work. I am *[we are]* aware of no medical studies that support the assumption that older adults with serious, longstanding disabilities are able to regain the ability to work in significant numbers as they near retirement age. *[Please insert anything else you can add here. This specific provision is likely to be the subject of litigation, and your medical expertise will bolster an eventual lawsuit.]*  The proposed rule, then, relies on mere guesses or wishes to justify rulemaking that would be affirmatively harmful to older adults.

The proposed rule also assumes that people with serious behavioral health conditions like depressive disorder, bipolar disorder, generalized anxiety disorder, panic disorder, are likely to improve medically in two-year increments. SSA provides no rationale for this assumption, and it is unsupported by medical evidence. *[Please insert anything you can say here about the persistent nature of those conditions, based on medical studies and/or your own patient population. Also, please feel free to describe the challenges imposed by evaluating chronic behavioral conditions that can be episodic in nature at fixed points in time.]*

In sum, I *[we]* strongly oppose SSA’s proposed rule to conduct CDRs more frequently, because it would be harmful to people with disabilities and it is unsupported by medical evidence. I *[We]* respectfully request that SSA rescind the proposed rule.

Thank you very much for your consideration of this comment.

Sincerely,