

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960-AD96

Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Benefit Reforms for Individuals Disabled Based on Drug Addiction or Alcoholism

AGENCY: Social Security Administration, HHS.

ACTION: Interim final rules with request for comments.

SUMMARY: The Social Security Independence and Program Improvements Act of 1994 contains provisions affecting the payment of benefits under titles II and XVI of the Social Security Act (the Act) to individuals whose drug addiction or alcoholism is a contributing factor material to the determination of disability. These interim final rules implement certain provisions related to limitations on benefit payments and the nonpayment and termination of benefits to these individuals.

DATES: These interim final rules are effective on March 1, 1995. To be sure that your comments are considered, we must receive them no later than April 11, 1995.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966-2830, or delivered to the Division of Regulations and Rulings, Social Security Administration, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Regarding this **Federal Register** document—Richard M. Bresnick, Legal Assistant, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-1758; regarding eligibility or filing for benefits—our national toll-free number, 1-800-772-1213.

SUPPLEMENTARY INFORMATION:

History

In 1972, Public Law (Pub. L.) 92-603 established the supplemental security income (SSI) program under title XVI of the Act. Aside from disability for children under age 18 and blindness, the Act provided the same definition of disability for individuals under title XVI as it does under title II. However, the SSI program included special provisions for disabled persons medically determined to be drug addicts or alcoholics. As implemented, those provisions applied to individuals whose drug addiction or alcoholism (DAA) was a contributing factor material to the determination that they were disabled (disabled based on DAA). The SSI provisions stated that an individual determined to be disabled based on DAA could receive SSI benefits only if he or she underwent appropriate treatment for the substance addiction when it was available and received payments through a representative payee.

The 1972 legislation also required the Secretary of Health and Human Services (the Secretary) to provide for the monitoring and testing of these individuals to assure compliance with treatment and to determine how the imposition of the treatment requirement contributes to the achievement of program purposes. The Secretary also was required to submit an annual report to Congress on the treatment and compliance of affected SSI recipients.

Prior to the passage of the Social Security Independence and Program Improvements Act of 1994, Pub. L. 103-296, enacted on August 15, 1994, there were no special program rules for Social Security beneficiaries whose medically determined drug addiction or alcoholism was a contributing factor material to the determination of disability.

New Legislation

The amendments made to the Act by section 201 of Pub. L. 103-296 introduced several new requirements and limitations for SSI recipients disabled based on DAA and applied similar requirements and limitations to Social Security beneficiaries disabled based on DAA, as well. These requirements and limitations are, in part, intended to discourage individuals from using Social Security or SSI benefits to support an addiction, as well as encourage the treatment and rehabilitation of individuals disabled based on DAA.

Section 201(a) of Pub. L. 103-296 contains the title II provisions related to

DAA and section 201(b) contains the corresponding SSI provisions. The new requirements and changes under both programs for individuals disabled based on DAA include:

- Paying benefits to a representative payee;
- A preference for selecting certain types of organizational payees, inclusion of certain State and local government agencies as qualified organizations, making permanent the provision authorizing certain qualified organizations to collect a fee from beneficiaries for whom they serve as representative payees, and increasing the upper limit of the fee that organizational payees can charge persons disabled based on DAA;
- Requiring both Social Security and SSI recipients who are disabled based on DAA to undergo appropriate substance abuse treatment, if available;
- Suspending benefits for months in which there is a failure to comply with appropriate, available treatment and requiring that individuals must demonstrate compliance with that treatment for a specified period of time before payments can resume;
- Terminating benefits after 12 consecutive months of suspension for noncompliance (the individual may reapply and receive disability benefits based on DAA for the remainder of the 36-month limit described below);
- Monitoring and testing of individuals to assure compliance;
- Establishing at least one referral and monitoring agency (RMA) in every State to identify appropriate treatment placements, to refer individuals disabled based on DAA to treatment and to monitor compliance with such treatment;
- Paying past-due benefits in installments, with a limited exception for individuals with outstanding debts related to housing who are at a high risk of homelessness;
- A 36-month limit on the payment of benefits beginning with the March 1995 payment month, with some differences between the title II and SSI programs as to how the months are counted (months of suspension will not be counted in the 36 months for either program);
- A "sunset date" of September 2004 for the 36-month limit on the payment of benefits;
- Continued Social Security benefit payments to auxiliaries after a disabled wage earner's benefits are suspended for failure to comply with treatment requirements or when entitlement is terminated after the 36 months, as long as the wage earner continues to be disabled;

- Continuation of beneficiary status for purposes of Medicare and Medicaid coverage during periods of suspense for noncompliance and after eligibility or entitlement is terminated after 36 months of benefits are paid, as long as the individual remains disabled.

Many of these provisions are effective for benefits payable for months beginning March 1, 1995. Implementing regulations for certain statutory provisions must be issued by February 11, 1995, 180 days after enactment, and are included in these interim final rules. For those statutory provisions not requiring final regulations by February 1995, principally those concerning representative payment, we will publish a separate notice of proposed rulemaking (NPRM) in the **Federal Register**.

These interim final regulations affect all disabled individuals whose drug addiction or alcoholism is a contributing factor material to the determination of disability, including those who were found eligible for title II or SSI benefits before March 1, 1995. By March 1, 1995, the Social Security Administration (SSA) will have sent notices to these individuals of the changes in the Act which affect them, as required by section 201 of Pub. L. 103-296. At the same time, SSA also will have sent notices to the representative payees of these individuals who have them.

Congressional Direction to Consult With Experts

Section 201 of Pub. L. 103-296 directed the Secretary to consult with drug and alcohol treatment professionals in formulating regulations defining appropriate treatment for individuals subject to the new provisions and establishing guidelines for the review and evaluation of compliance and progress. On August 24-25, 1994, SSA convened a meeting in Hunt Valley, Maryland of substance abuse treatment professionals from across the nation to gain their individual views on devising the new and revised regulations. During this meeting, a wide range of substance abuse-related topics was discussed, but the focus was on the legislative requirements to treat and monitor this disabled population. In addition, SSA has written directly to numerous professional organizations, individual treatment professionals, public advocacy organizations, RMAs, and others with knowledge of substance abuse-related issues seeking their views on treatment and compliance questions and issues to gain balanced input on

general contemporary treatment philosophies.

On October 17, 1994, SSA published in the **Federal Register** a Notice of Intent with Request for Comments (59 FR 52380) to solicit public comments about the legislative requirements imposed by Pub. L. 103-296 and the regulations SSA is required to promulgate. The comment period closed on November 16, 1994.

The comments we have received from all of these varied sources have proved to be invaluable in revising the rules relating to individuals under a disability when drug addiction or alcoholism is a contributing factor material to the determination of disability.

What the Experts and Other Public Commenters Told Us

We solicited the views of experts in the field of substance abuse treatment, as required by Pub. L. 103-296. We received valuable input from treatment professionals and administrators at the August 24-25 meeting and subsequently received written comments from many of the attendees. While we were interested in receiving the views of the experts and other members of the public on all issues related to the DAA provisions, we sought specific input from the discussions and the Notice of Intent published October 17, 1994, on the following issues:

- The definition of "appropriate" treatment for DAA;
- The definition of when treatment is "available";
- How to define and evaluate "progress" in treatment;
- How to evaluate "compliance" with treatment;
- The frequency with which RMAs should monitor an individual's compliance with his/her treatment plan;
- The definition of "good cause" for an individual's failure to comply with the treatment requirements; and
- The costs and benefits to be realized from the provisions.

In response to the Notice of Intent, we received comments from 56 individuals and groups. Commenters from State and local governments ranged from State RMAs to Social Service Agencies, Medicaid Agencies, and county government offices. Two national associations of directors of State governmental entities also provided comments. In addition, several treatment facilities, legal services organizations, and individual attorneys commented on the Notice of Intent.

We have carefully considered all of the comments in developing these interim final regulations.

Appropriate Treatment

Most commenters defined appropriate substance abuse treatment as a continuum of services to individuals with alcohol and other drug problems. Many commenters believed that appropriate treatment is that which serves the individual's needs in the least restrictive setting consistent with an individualized treatment plan. A significant number of commenters expressed the view that appropriate treatment can be defined only on an individualized basis by treatment professionals since there is no one modality that will work for every client disabled based on DAA. Accordingly, various commenters advised SSA to refrain from promulgating specific regulatory guidelines. Rather, they suggested that the determination of "appropriate" treatment should be within the purview of treatment professionals, circumscribed by very general guidelines provided by SSA. Many commenters stated that client participation in 12-step programs such as Alcoholics Anonymous is not, in and of itself, appropriate treatment. While such programs may be part of an overall treatment plan, because of their nature, they are not treatment.

Available Treatment

Many commenters believed that the definition of "availability" of substance abuse treatment should be a broadly inclusive definition to assure that the client can in fact avail himself or herself of appropriate treatment. Many commenters offered a list of factors that should be used in determining availability of treatment: location of the facility, availability and affordability of transportation, child care, the client's general health, particular condition and circumstances, language and cultural appropriateness.

There was a division among commenters as to whether one component of "available" should be whether the treatment was without cost to the client. Some commenters were of the view that treatment must be without cost in order to be "available." Others thought that the client should be required to make some investment in the treatment program by paying for some or all of the cost of treatment, depending upon the type of treatment and the client's circumstances.

Evaluating Progress in Treatment

Generally, commenters posited that it would be difficult to construct one definition or method by which to measure individuals' progress in treatment. A large organization of State

program administrators and others commented that no universally accepted tool existed to measure individuals' progress in substance abuse treatment. Due to the lack of a universally acceptable tool to measure progress, other commenters were of the view that treatment professionals should evaluate whether progress is made according to very general rules set out by SSA. A few commenters provided suggestions for some of the elements in the measurement of progress, including abstinence from alcohol and drug use, a reduction in the use of emergency medical services, an increase in educational or vocational rehabilitation activities, and avoidance of criminal activity.

Evaluating Compliance With Treatment

The commenters favored general rather than specific rules governing compliance with the treatment requirements. Several commenters were of the view that compliance means that an individual follows his or her individual treatment plan. Accordingly, the treatment professional is in the best position to evaluate compliance. One legal services organization was concerned that SSA retain the ultimate responsibility for determining compliance. One aspect of compliance is the issue of requiring alcohol and drug testing. A few commenters recommended that SSA mandate drug tests for beneficiaries in treatment. Several commenters, including one of the large national organizations of State administrators, advised against mandatory drug testing. In their view, the need for and frequency of drug testing should be determined by the treatment professional in accordance with an individualized treatment plan. Concern was expressed about the cost of mandatory drug testing and inaccuracies inherent in drug testing results.

Good Cause for Failure to Comply With Treatment

Many commenters supported an expansive list of factors that would be considered "good cause" for noncompliance with the treatment requirements, such as medical problems, lack of transportation, or personal or family tragedies. Some commenters thought that the treatment provider was in the best position to evaluate if the client had "good cause" for noncompliance. A minority of commenters supported a very restrictive definition because of their concern that "good cause" factors could be manipulated by individuals in treatment.

Costs and Benefits

Few commenters provided information on the potential costs and benefits of the provisions. Commenters provided a range of estimated costs for drug testing expenses.

Other Comments

Many commenters expressed concerns regarding a number of operational issues which are not the subject of these regulations. Although these concerns are not regulatory issues, they have been considered carefully in the development of our operating procedures.

Explanation of Revisions

These interim final regulations amend §§ 404.315, 404.316, 404.321, 404.332, 404.335, 404.337, 404.350, 404.352, 404.402, 404.902, 416.202, 416.213, 416.262, 416.265, 416.535, 416.542, 416.558, 416.601, 416.610, 416.935, 416.936, 416.937, 416.938, 416.939, 416.1123, 416.1326, 416.1331, 416.1335, 416.1402 and 416.1725 and create new §§ 404.470, 404.480, 404.1535, 404.1536, 404.1537, 404.1538, 404.1539, 404.1540, 404.1541, 416.544, 416.940 and 416.941 to reflect the statutory changes.

Section 404.315 is revised to add a new paragraph explaining the prohibition against reentitlement to disability benefits based on DAA after receiving 36 months of disability benefits on the basis of that impairment.

Sections 404.316 and 404.321 have been amended to include an explanation of the 36-month benefit limit and the termination of benefits for 12 consecutive months of noncompliance in cases in which drug addiction or alcoholism is a contributing factor material to the determination of disability.

Section 404.332 is revised to state that, if the insured person is disabled based on DAA and benefits terminate because of noncompliance with treatment or because of the 36-month benefit limit, benefits to the spouse will continue, provided the insured person remains disabled.

Section 404.335 provides that, if benefits to a widow(er) who is disabled based on DAA are terminated after 36 months of benefits, that person cannot become entitled again to widow(er)'s benefits if drug addiction or alcoholism is a contributing factor material to the later determination of disability.

Section 404.337 explains that, if the widow(er)'s entitlement to benefits is based on DAA, benefits will terminate after 12 consecutive months of suspension for noncompliance with

treatment or, unless otherwise disabled without regard to drug addiction or alcoholism, after having received 36 months of payment.

Section 404.350 is revised to state that, if the entitlement of a disabled child age 18 or over whose disability was based on DAA terminates because of the 36-month benefit limit, the child may not be entitled again to benefits based on a disability if drug addiction or alcoholism is a contributing factor material to the later determination of disability.

Section 404.352 states that, if the disability of a disabled child age 18 or over is based on DAA and his or her benefits have been suspended for a period of 12 consecutive months for failure to comply with treatment, those benefits will terminate with the month following the 12-month period of suspension. Likewise, if, after receiving 36 months of benefits based on DAA, the child would not otherwise be disabled without regard to drug addiction or alcoholism, benefits based on disability will be terminated with the month following the 36th month of payment. If the disabled child is receiving benefits on the record of a wage earner whose disability was based on DAA and benefits to the wage earner end because of noncompliance with treatment or 36 months of benefits have been paid, benefits to the child will continue, provided the insured person would have remained entitled to benefits but for the operation of this provision.

Section 404.402 is revised to include nonpayments because of drug addiction or alcoholism in the list of deductions, reductions, and adjustment events which are considered before computing any applicable reduction for the family maximum.

Sections 404.470 and 416.1725 explain the nonpayment ramifications for beneficiaries disabled based on DAA who fail to comply with the rules regarding available treatment for drug addiction or alcoholism. Benefits will be suspended beginning with the first month after we notify the individual of a determination of noncompliance with the treatment requirements. Benefits will be terminated after 12 consecutive months of suspension for noncompliance.

Sections 404.480 and 416.544 explain that past-due benefits must be paid in installments. Accrued unpaid benefits must be paid in installments so that the total monthly payment including the installment generally does not exceed two times the monthly benefit amount. These sections also explain the exception to the limitation if the

beneficiary has unpaid housing debts which put him or her at high risk of homelessness. We consider an individual to be at high risk of homelessness if continued nonpayment of housing expenses is likely to result in the individual losing a place to live. We also consider an individual who is already homeless to be among those at high risk of homelessness.

Section 404.902 is revised to expand the list of administrative actions that are initial determinations to include determinations about drug addiction or alcoholism.

Sections 404.1535 and 416.935 explain the process by which a determination is made that drug addiction or alcoholism is a contributing factor material to the determination of disability.

Sections 404.1536 and 416.936 explain the treatment requirements and the consequences of noncompliance with these requirements for individuals disabled based on DAA. For consistency between programs, especially for individuals who receive concurrent title II and SSI benefits, we extend to title II beneficiaries the current SSI policy that individuals referred for treatment generally are not expected to pay for the treatment.

Sections 404.1537 and 416.937 explain what we mean by appropriate treatment for these individuals and give examples of appropriate treatment modalities.

Sections 404.1538 and 416.938 explain what we mean by approved institutions or facilities for providing the appropriate treatment.

Sections 404.1539 and 416.939 describe the factors we will consider in determining the availability of treatment.

Sections 404.1540 and 416.940 explain how we intend to assess compliance with prescribed treatment, including measuring progress with the treatment.

Based upon our contact with treatment professionals and administrators, we deemed it best that our regulations not attempt to provide exhaustive guidelines for determining what constitutes appropriate treatment and definitive methods of measuring progress. These particular concepts are inherent parts of the treatment program, which must be developed by the treatment professional for each individual. Thus, in these regulatory sections, we have provided broad rather than narrow guidelines in these areas.

Sections 404.1541 and 416.941 delineate the functions and responsibilities of the RMAs. The RMAs' duties include making treatment

referrals and monitoring compliance with prescribed treatment. The contractual agreements with the RMAs will set forth their functions and responsibilities in much more detail.

In carrying out their functions and responsibilities, the RMAs will work closely with State alcohol and other drug abuse agencies, which often are the focal point for the delivery of publicly funded services to SSI beneficiaries.

Section 416.202 has been revised to reflect the new provision that an individual disabled based on DAA is not eligible for SSI benefits if he or she has previously received 36 months of Social Security benefits when treatment was available or 36 months of SSI benefits based on DAA.

Section 416.213 is revised to state that an individual disabled based on DAA who refuses or does not follow available and appropriate treatment for drug addiction or alcoholism will not receive SSI benefits until he or she has demonstrated compliance with treatment requirements for the period specified in the revised rules in § 416.1326. The section also explains in detail the eligibility requirement that an individual cannot receive SSI benefits on the basis of disability based on DAA if he or she has already received 36 months of SSI or Social Security benefits on the same basis. The section contains references to other SSI and Social Security regulatory sections which explain how the 36 months are calculated for each of those programs.

Sections 416.262 and 416.265 have been revised to explain that individuals who are disabled based on DAA may be eligible for SSI payments, including special SSI cash benefits, and special SSI eligibility status for a total of 36 months.

Section 416.535 is revised to include cross-references to the SSI regulatory sections which state the rules on the installment payment of past-due benefits for individuals who are disabled based on DAA.

Section 416.542 is revised to explain that, if an underpaid recipient disabled based on DAA is alive, the amount of any underpayments due the recipient will be paid to his or her representative payee. No underpayments may be paid to the recipient.

Section 416.558 is revised by adding to paragraph (a) a reference to the new § 416.544, and by adding a new paragraph (c) to explain that, whenever a decision is made about the amount of any benefits due for a past period that should be paid in installments, the written notice which is sent to the individual and the individual's representative payee will also explain

the amount of the installment payment and when an increased initial installment payment may be made.

The last sentence of paragraph (b)(1) of § 416.601 and paragraph (a)(3) of § 416.610 are revised to update the language referring to an individual "medically determined to be a drug addict or an alcoholic." We now refer to individuals for whom "drug addiction or alcoholism is a contributing factor material to the determination of disability." This does not change the meaning in any way; it merely makes the terminology consistent with that used throughout these regulations.

Paragraph (d) of § 416.1123, which discusses how we count retroactive monthly Social Security benefits as unearned income, is revised to address the counting of such benefits when they are paid in installments. New installment requirements for past-due benefits for individuals disabled based on DAA are explained in § 416.544. Because of those requirements, SSA generally will be precluded from paying at one time all past-due benefits remaining after reimbursing a State for interim assistance (when appropriate). Paragraph (d)(2) explains that the total of retroactive Social Security benefits paid in installments to individuals disabled based on DAA which is countable income after the rules in paragraph (d)(1) are applied will be counted as unearned income only in the first month they are paid.

In enacting section 201 of Pub. L. 103-296, Congress evidenced no intent to change the manner in which past-due Social Security benefits are counted for SSI purposes, but instead intended to reduce the likelihood that the past-due benefits would be used by the beneficiary in a way that would support continuing substance abuse. By counting retroactive benefits paid in installments as if received in a lump sum in the first month of payment, the SSI recipient will be at risk of losing SSI (and possibly Medicaid) eligibility for at most 1 month because of the receipt of those benefits, as is now the case. The alternative method of counting these past-due benefits—month by month as the installments are received—would result, in many cases, in the loss of eligibility for both SSI and Medicaid for the entire period during which the installments are paid. A loss of eligibility for Medicaid could severely limit the accessibility of treatment for drug addiction or alcoholism and thus undermine the intent of the legislation. Accordingly, these regulations make no change in the way past-due benefits are counted for SSI purposes; past-due benefits will continue to be counted as

if received in a lump sum even when received in installments.

Section 416.1326 has been revised to explain that SSI benefits for individuals disabled based on DAA will be suspended for noncompliance with treatment requirements effective the first month after notification of noncompliance. Suspension of SSI benefits will continue until the recipient demonstrates compliance with treatment for specified periods; a minimum of 2 months, 3 months, and 6 months, respectively, for the first, second, and third and additional determinations of noncompliance. Suspension of benefits for 12 consecutive months, for any reason, will result in termination of benefits.

Section 416.1331, which addresses termination of disability benefits, has been revised. New paragraph (c) discusses termination after 12 months of suspension for noncompliance. New paragraph (d) describes the limit of 36 months on benefits and that this limit is no longer effective for benefits for months beginning after September 2004. New paragraph (e) explains what months are counted in determining the 36 months of benefits.

Section 416.1335, which discusses termination due to continuous suspension for ineligibility, has been amended by changing the language to explain that SSI benefits will be terminated after 12 months of suspension, even when some or all of the suspension months are due to suspension for noncompliance, as defined in § 416.1326.

Paragraph (d) of § 416.1402 is revised to update the language referring to an individual "determined to be a drug addict or an alcoholic." We now refer to an individual for whom "drug addiction or alcoholism is a contributing factor material to the determination of disability." This does not change the meaning in any way; it merely makes the terminology consistent with that in the new legislation and used throughout these regulations.

Regulatory Procedures

The Department of Health and Human Services, even when not required by statute, as a matter of policy generally follows the Administrative Procedure Act (APA) NPRM and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. In the case of these interim

final rules, we have determined that under 5 U.S.C. 553(b)(B), good cause exists for waiving the NPRM procedures.

Pub. L. 103-296 was signed into law on August 15, 1994. Sections 201(a)(3)(E)(i) and 201(b)(3)(E)(i) of Pub. L. 103-296 require the Secretary to issue regulations necessary to carry out those amendments made by section 201 which are the subject of these interim final rules by February 11, 1995. In addition, the legislation requires that the Secretary consult with drug and alcohol treatment professionals in developing certain aspects of these regulations with regard to defining appropriate substance abuse treatment and establishing guidelines to review and evaluate compliance with treatment and measures of progress. Accordingly, to undertake the required consultation process and also issue these rules as an NPRM would have delayed issuance of final rules until well past the statutory deadline of February 11, 1995. In light of these constraints, we solicited public comments on the regulations needed to implement certain aspects of this new legislation by publishing a Notice of Intent with Request for Comments on October 17, 1994 (59 FR 52380), and allowed adequate time to give the comments received in response to that notice our full consideration.

In addition, publishing interim final regulations will permit the timely and effective implementation of the new provisions for recipients whose drug addiction or alcoholism is a contributing factor material to the determination of disability. Such implementation may allow some recipients to get into available treatment for their addictions sooner. This will benefit both the recipients and the public at large.

In light of the Congressional mandate that we issue regulations needed to carry out these statutory provisions no later than February 11, 1995, we believe that, under the APA, good cause exists for waiver of the prior notice procedures since issuance of proposed rules would be impracticable and contrary to the public interest. While we are issuing these rules as interim final regulations, we are interested in receiving public comments regarding the substance of these interim rules.

Executive Order 12866

These interim final rules reflect and implement most of the provisions of sections 201(a) and 201(b) of Pub. L. 103-296. The Office of Management and Budget (OMB) has reviewed these interim final rules and determined that they meet the criteria for a significant

regulatory action under E.O. 12866. Therefore, we prepared and submitted to OMB, separately from the interim final rules, an assessment of the potential costs and benefits of this regulatory action. This document also contains an analysis of alternative policies we considered and chose not to adopt. This assessment is available for review by members of the public.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect individuals' eligibility for program benefits under the Social Security Act. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These interim final rules contain information collection requirements in §§ 404.480, 404.1540, 404.1541, 416.544, 416.940, and 416.941. As required by the Paperwork Reduction Act of 1980, we will submit a copy of these information collection requirements to OMB for its review. Organizations and individuals desiring to submit comments on these information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 3208, Washington, D.C. 20503, Attention: Desk Officer for HHS. The public reporting burden for the collections of information in §§ 404.480 and 416.544 is estimated to average 4 minutes per response. The burden for §§ 404.1540, 404.1541, 416.940, and 416.941 is estimated to average 5 minutes per response for one form for each beneficiary annually, and 10 minutes per response for another form for each beneficiary monthly. These include the time it will take to read the instructions, gather the necessary facts, and provide the information. For §§ 404.480 and 416.544 we expect approximately 2,400 beneficiaries or recipients to provide responses and estimate the total annual burden to be 160 hours. For §§ 404.1540, 404.1541, 416.940, and 416.941 we expect responses from treatment providers through approximately 52 RMAs on behalf of approximately 184,000 beneficiaries or recipients and estimate the total annual burden to be 395,600 hours. If you have any comments or suggestions on these estimates, write to the Social Security Administration, Attention: Reports Clearance Officer, 1-A-21 Operations Building, 6401

Security Boulevard, Baltimore, MD 21235.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security-Disability Insurance; 93.803, Social Security-Retirement Insurance; 93.805, Social Security-Survivors Insurance; 93.807, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: December 22, 1994.

Shirley S. Chater,
Commissioner of Social Security.

Approved: February 2, 1995.

Donna E. Shalala,
Secretary of Health and Human Services.

For the reasons set forth in the preamble, part 404, subparts D, E, J, and P of chapter III of title 20 of the Code of Federal Regulations are amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950—)

1. The authority citation for subpart D of part 404 is revised to read as follows:

Authority: Secs. 202, 203(a) and (b), 205(a), 216, 223, 225, 228(a) through (e), and 1102 of the Social Security Act; 42 U.S.C. 402, 403 (a) and (b), 405(a), 416, 423, 425, 428(a) through (e), and 1302.

2. Section 404.315 is amended by redesignating the introductory test as paragraph (a) and adding a heading to it, redesignating former paragraphs (a) through (d) as paragraphs (a)(1) through (a)(4), and adding a new paragraph (b) to read as follows:

§ 404.315 Who is entitled to disability benefits.

(a) *General.* * * *

(b) *Prohibition against reentitlement to disability benefits if drug addiction or alcoholism is a contributing factor material to the determination of disability.* You cannot be entitled to a period of disability payments if drug addiction or alcoholism is a contributing factor material to the determination of disability and your

earlier entitlement to disability benefits on the same basis terminated after you received benefits for 36 months during which treatment was available.

3. Section 404.316 is amended by adding paragraphs (e) and (f) to read as follows:

§ 404.316 When entitlement to disability benefits begins and ends.

* * * * *

(e) If drug addiction or alcoholism is a contributing factor material to the determination of disability as described in § 404.1535, you may receive disability benefits on that basis for no more than 36 months regardless of the number of entitlement periods you may have. Not included in these 36 months are months in which treatment for your drug addiction or alcoholism is not available, months before March 1995, and months for which your benefit payments were suspended for any reason. Benefits to your dependents may continue after the 36 months of benefits if, but for the operation of this paragraph, you would otherwise be entitled to benefits based on disability. The 36-month limit is no longer effective for benefits for months beginning after September 2004.

(f) If drug addiction or alcoholism is a contributing factor material to the determination of disability as described in § 404.1535 and your disability benefits are suspended for 12 consecutive months because of your failure to comply with treatment requirements, your disability benefits will be terminated effective the first month after such 12-month period. Benefits to your dependents may continue after the 12-month period if, but for the operation of this paragraph, you would otherwise be entitled to benefits based on disability.

4. Section 404.321 is amended by adding paragraph (d) to read as follows:

§ 404.321 When a period of disability begins and ends.

* * * * *

(d) *When drug addiction or alcoholism is a contributing factor material to the determination of disability.* (1) Your entitlement to receive disability benefit payments ends the month following the month in which, regardless of the number of entitlement periods you may have had based on disability where drug addiction or alcoholism is a contributing factor material to the determination of disability (as described in § 404.1535)—

(i) You have received a total of 36 months of disability benefits. Not included in these 36 months are months

in which treatment for your drug addiction or alcoholism is not available, months before March 1995, and months for which your benefits were suspended for any reason; or

(ii) Your benefits have been suspended for 12 consecutive months because of your failure to comply with treatment requirements.

(2) For purposes other than payment of your disability benefits, your period of disability continues until the termination month as explained in § 404.325.

5. Section 404.332 is amended by adding a sentence to the end of paragraph (b)(5) to read as follows:

§ 404.332 When wife's and husband's benefits begin and end.

* * * * *

(b) * * *

(5) * * * Exception: Your benefits will continue if the insured person was entitled to disability benefits based on a finding that drug addiction or alcoholism was a contributing factor material to the determination of his or her disability (as described in § 404.1535), the insured person's benefits ended after 36 months of benefits (see § 404.316(e)) or 12 consecutive months of suspension for noncompliance with treatment (see § 404.316(f)), and but for the operation of these provisions, the insured person would remain entitled to benefits based on disability.

* * * * *

6. Section 404.335 is amended by removing the word "and" at the end of paragraph (c)(2), adding the word "and" after the semicolon at the end of paragraph (c)(3), and adding a new paragraph (c)(4) to read as follows:

§ 404.335 Who is entitled to widow's or widower's benefits.

* * * * *

(c) * * *

* * * * *

(4) You have not previously received 36 months of payments based on disability when drug addiction or alcoholism was a contributing factor material to the determination of disability (as described in § 404.1535), regardless of the number of entitlement periods you may have had, or your current application for widow(er)'s benefits is not based on a disability where drug addiction or alcoholism is a contributing factor material to the determination of disability.

* * * * *

7. Section 404.337 is amended by adding a new sentence at the end of paragraph (b)(2) to read as follows:

§ 404.337 When widow's and widower's benefits begin and end.

* * * * *

(2) * * * If your widow's or widower's benefit is based on a finding that drug addiction or alcoholism is a contributing factor material to the determination of disability as described in § 404.1535, your entitlement to benefits will terminate the month after the 12th consecutive month of suspension for noncompliance with treatment or after 36 months of benefits on that basis when treatment is available regardless of the number of entitlement periods you may have had, unless you are otherwise disabled without regard to drug addiction or alcoholism.

* * * * *

8. Section 404.350 is amended by redesignating the introductory text as paragraph (a) and adding a heading to it, redesignating former paragraphs (a) through (e) as paragraphs (a)(1) through (a)(5), and adding a new paragraph (b) to read as follows:

§ 404.350 Who is entitled to child's benefits.

(a) *General.* * * *

* * * * *

(b) *Entitlement preclusion for certain disabled children.* If you are a disabled child as referred to in paragraph (a)(5) of this section, and your disability was based on a finding that drug addiction or alcoholism was a contributing factor material to the determination of disability (as described in § 404.1535) and your benefits ended after your receipt of 36 months of benefits, you will not be entitled to benefits based on disability for any month following such 36 months regardless of the number of entitlement periods you have had if, in such following months, drug addiction or alcoholism is a contributing factor material to the later determination of disability (as described in § 404.1535).

9. Section 404.352 is amended by adding a new sentence to the end of paragraph (b)(3), redesignating paragraphs (c) and (d) as paragraphs (d) and (e), and adding a new paragraph (c) to read as follows:

§ 404.352 When child's benefits begin and end.

* * * * *

(b) * * *

(3) * * * Exception: Your benefits will continue if the insured person was entitled to disability benefits based on a finding that drug addiction or alcoholism was a contributing factor material to the determination of his or her disability (as described in § 404.1535), the insured person's

benefits ended after 36 months of payment (see § 404.316(e)) or 12 consecutive months of suspension for noncompliance with treatment (see § 404.316(f)), and the insured person remains disabled.

(c) If you are entitled to benefits as a disabled child age 18 or over and your disability is based on a finding that drug addiction or alcoholism was a contributing factor material to the determination of disability (as described in § 404.1535), your benefits also will terminate under the following conditions:

(1) If your benefits have been suspended for a period of 12 consecutive months for failure to comply with treatment, your benefits will terminate with the month following the 12 months unless you are otherwise disabled without regard to drug addiction or alcoholism (see § 404.470(c)).

(2) If you have received 36 months of benefits on that basis when treatment is available, regardless of the number of entitlement periods you may have had, your benefits will terminate with the month following such 36-month payment period unless you are otherwise disabled without regard to drug addiction or alcoholism.

10. The authority citation for subpart E of part 404 is revised to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 222(b), 223(e), 224, 225, 227, and 1102 of the Social Security Act; 42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 422(b), 423(e), 424, 425, 427, and 1302.

11. Section 404.402 is amended by revising paragraph (a), introductory text, to read as follows:

§ 404.402 Interrelationship of deductions, reductions, adjustments, and nonpayment of benefits.

(a) *Deductions, Reductions, Adjustment.* Deductions because of earnings or work (see §§ 404.415 and 404.417); failure to have a child "in her care" (see § 404.421); refusal to accept rehabilitation services (see § 404.422); as a penalty for failure to timely report noncovered work outside the United States, failure by a woman to report that she no longer has a child "in her care," or failure to timely report earnings (see §§ 404.451 and 404.453); because of unpaid maritime taxes (see § 404.457); or nonpayments because of drug addiction and alcoholism to individuals other than an insured individual who are entitled to benefits on the insured individual's earnings record are made:

* * * * *

12. A new § 404.470 is added to read as follows:

§ 404.470 Nonpayment of disability benefits due to noncompliance with rules regarding treatment for drug addiction or alcoholism.

(a) *Suspension of monthly benefits.* (1) For an individual entitled to benefits based on a disability (§ 404.1505) and for whom drug addiction or alcoholism is a contributing factor material to the determination of disability (as described in § 404.1535), monthly benefits will be suspended beginning with the first month after we notify the individual in writing that he or she has been determined not to be in compliance with the treatment requirements for such individuals (§ 404.1536).

(2) This rule applies to all individuals entitled to disability benefits (§ 404.315), widow(er)'s benefits (§ 404.335), and child's benefits based on a disability (§ 404.350) effective with benefits paid in months beginning on or after March 1, 1995.

(3) Benefit payments to any other person who is entitled on the basis of a disabled wage earner's entitlement to disability benefits are payable as though the disabled wage earner were receiving benefits.

(b) *Resumption of monthly benefits.* The payment of benefits may be resumed only after an individual demonstrates and maintains compliance with appropriate treatment requirements for:

- (1) 2 consecutive months for the first determination of noncompliance;
- (2) 3 consecutive months for the second determination of noncompliance; and
- (3) 6 consecutive months for the third and all subsequent determinations of noncompliance.

(c) *Termination of benefits.* (1) A suspension of benefit payments due to noncompliance with the treatment requirements for 12 consecutive months will result in termination of benefits effective with the first month following the 12th month of suspension of benefits.

(2) Benefit payments to any other person who is entitled on the basis of a disabled wage earner's entitlement to disability benefits are payable as though the disabled wage earner were receiving benefits.

13. A new § 404.480 is added to read as follows:

§ 404.480 Paying benefits in installments: Drug addiction or alcoholism.

(a) *General.* For disabled beneficiaries who receive benefit payments through a representative payee because drug

addiction or alcoholism is a contributing factor material to the determination of disability (as described in § 404.1535), certain amounts due the beneficiary for a past period will be paid in installments. The amounts subject to payment in installments include:

(1) benefits due but unpaid which accrued prior to the month payment was effectuated;

(2) benefits due but unpaid which accrued during a period of suspension for which the beneficiary was subsequently determined to have been eligible; and

(3) any adjustment to benefits which results in an accrual of unpaid benefits.

(b) *Installment formula.* Except as provided in paragraph (c) of this section, the amount of the installment payment in any month is limited so that the sum of (1) the amount due for a past period (and payable under paragraph (a) of this section) paid in such month and (2) the amount of any benefit due for the preceding month under such entitlement which is payable in such month, does not exceed two times the amount of the beneficiary's benefit payment for the preceding month. In counting the amount of the beneficiary's benefit payment for the previous month, no reductions or deductions under this title are taken into account.

(c) *Exception to installment limitation.* An exception to the installment payment limitation in paragraph (b) of this section can be granted for the first month in which a beneficiary accrues benefit amounts subject to payment in installments if the beneficiary has unpaid housing expenses which result in a high risk of homelessness for the beneficiary. In that case, the benefit payment may be increased by the amount of the unpaid housing expenses so long as that increase does not exceed the amount of benefits which accrued during the most recent period of nonpayment. We consider a person to be at risk of homelessness if continued nonpayment of the outstanding housing expenses is likely to result in the person losing his or her place to live or if past nonpayment of housing expenses has resulted in the person having no appropriate personal place to live. In determining whether this exception applies, we will ask for evidence of outstanding housing expenses that shows that the person is likely to lose or has already lost his or her place to live. For purposes of this section, homelessness is the state of not being under the control of any public institution and having no appropriate personal place to live. Housing expenses include charges for all items required to

maintain shelter (for example, mortgage payments, rent, heating fuel, and electricity).

(d) *Payment through a representative payee.* If the beneficiary does not have a representative payee, payment of amounts subject to installments cannot be made until a representative payee is selected.

(e) *Underpaid beneficiary no longer entitled.* In the case of a beneficiary who is no longer currently entitled to monthly payments, but to whom amounts defined in paragraph (a) are still owing, we will treat such beneficiary's monthly benefit for the last month of entitlement as the beneficiary's benefit for the preceding month and continue to make installment payments of such benefits through a representative payee.

(f) *Beneficiary currently not receiving Social Security benefits because of suspension for noncompliance with treatment.* If a beneficiary is currently not receiving benefits because his or her benefits have been suspended for noncompliance with treatment (as defined in § 404.1536), the payment of amounts under paragraph (a) will stop until the beneficiary has demonstrated compliance with treatment as described in § 404.470 and will again commence with the first month the beneficiary begins to receive benefit payments.

(g) *Underpaid beneficiary deceased.* Upon the death of a beneficiary, any remaining unpaid amounts as defined in paragraph (a) will be treated as underpayments in accordance with § 404.503(b).

14. The authority citation for subpart J of part 404 is revised to read as follows:

Authority: Secs. 201(j), 205(a), (b), and (d) through (h), 221(d), 225, and 1102 of the Social Security Act; 31 U.S.C. 3720A; 42 U.S.C. 401(j), 405(a), (b), and (d) through (h), 421(d), 425, and 1302; sec. 5 of Pub. L. 97-455, 96 Stat. 2500; sec. 6 of Pub. L. 98-460, 98 Stat. 1802.

15. Section 404.902 is amended by revising paragraph (o), redesignating paragraphs (p) through (v) as paragraphs (q) through (w), and adding a new paragraph (p) to read as follows:

§ 404.902 Administrative actions that are initial determinations.

* * * * *

(o) Whether the payment of your benefits will be made, on your behalf, to a representative payee, unless you are under age 18, legally incompetent, or you are disabled and drug addiction or alcoholism is a contributing factor material to the determination of disability (as described in § 404.1535);

(p) Your drug addiction or alcoholism;

* * * * *

16. The authority citation for subpart P of part 404 is revised to read as follows:

Authority: Secs. 202, 205(a), (b), and (d) through (h), 216(i), 221(a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b), and (d) through (h), 416(i), 421(a) and (i), 422(c), 423, 425, and 1302.

17. A new § 404.1535 is added to read as follows:

§ 404.1535 How we will determine whether your drug addiction or alcoholism is a contributing factor material to the determination of disability.

(a) *General.* If we find that you are disabled and have medical evidence of your drug addiction or alcoholism, we must determine whether your drug addiction or alcoholism is a contributing factor material to the determination of disability.

(b) *Process we will follow when we have medical evidence of your drug addiction or alcoholism.*

(1) The key factor we will examine in determining whether drug addiction or alcoholism is a contributing factor material to the determination of disability is whether we would still find you disabled if you stopped using drugs or alcohol.

(2) In making this determination, we will evaluate which of your current physical and mental limitations, upon which we based our current disability determination, would remain if you stopped using drugs or alcohol and then determine whether any or all of your remaining limitations would be disabling.

(i) If we determine that your remaining limitations would not be disabling, we will find that your drug addiction or alcoholism is a contributing factor material to the determination of disability.

(ii) If we determine that your remaining limitations are disabling, you are disabled independent of your drug addiction or alcoholism and we will find that your drug addiction or alcoholism is not a contributing factor material to the determination of disability.

18. A new § 404.1536 is added to read as follows:

§ 404.1536 Treatment required for individuals whose drug addiction or alcoholism is a contributing factor material to the determination of disability.

(a) If we determine that you are disabled and drug addiction or alcoholism is a contributing factor

material to the determination of disability (as described in § 404.1535), you must avail yourself of appropriate treatment for your drug addiction or alcoholism at an institution or facility approved by us when this treatment is available and make progress in your treatment. Generally, you are not expected to pay for this treatment. You will not be paid benefits for any month after the month we have notified you in writing that—

(1) You did not comply with the terms, conditions and requirements of the treatment which has been made available to you; or

(2) You did not avail yourself of the treatment after you had been notified that it is available to you.

(b) If your benefits are suspended for failure to comply with treatment requirements, your benefits can be reinstated in accordance with the rules in § 404.470.

19. A new § 404.1537 is added to read as follows:

§ 404.1537 What we mean by appropriate treatment.

By appropriate treatment, we mean treatment for drug addiction or alcoholism that serves the needs of the individual in the least restrictive setting possible consistent with your treatment plan. These settings range from outpatient counseling services through a variety of residential treatment settings including acute detoxification, short-term intensive residential treatment, long-term therapeutic residential treatment, and long-term recovery houses. Appropriate treatment is determined with the involvement of a State licensed or certified addiction professional on the basis of a detailed assessment of the individual's presenting symptomatology, psychosocial profile, and other relevant factors. This assessment may lead to a determination that more than one treatment modality is appropriate for the individual. The treatment will be provided or overseen by an approved institution or facility. This treatment may include (but is not limited to)—

(a) Medical examination and medical management;

(b) Detoxification;

(c) Medication management to include substitution therapy (e.g., methadone);

(d) Psychiatric, psychological, psychosocial, vocational, or other substance abuse counseling in a residential or outpatient treatment setting; or

(e) Relapse prevention.

20. A new § 404.1538 is added to read as follows:

§ 404.1538 What we mean by approved institutions or facilities.

Institutions or facilities that we may approve include—

(a) An institution or facility that furnishes medically recognized treatment for drug addiction or alcoholism in conformity with applicable Federal or State laws and regulations;

(b) An institution or facility used by or licensed by an appropriate State agency which is authorized to refer persons for treatment of drug addiction or alcoholism;

(c) State licensed or certified care providers;

(d) Programs accredited by the Commission on Accreditation for Rehabilitation Facilities (CARF) and/or the Joint Commission for the Accreditation of Healthcare Organizations (JCAHO) for the treatment of drug addiction or alcoholism;

(e) Medicare or Medicaid certified care providers; or

(f) Nationally recognized self-help drug addiction or alcoholism recovery programs (e.g., Alcoholics Anonymous or Narcotics Anonymous) when participation in these programs is specifically prescribed by a treatment professional at an institution or facility described in paragraphs (a) through (e) of this section as part of an individual's treatment plan.

21. A new § 404.1539 is added to read as follows:

§ 404.1539 How we consider whether treatment is available.

Our determination about whether treatment is available to you for your drug addiction or your alcoholism will depend upon—

(a) The capacity of an approved institution or facility to admit you for appropriate treatment;

(b) The location of the approved institution or facility, or the place where treatment, services or resources could be provided to you;

(c) The availability and cost of transportation for you to the place of treatment;

(d) Your general health, including your ability to travel and capacity to understand and follow the prescribed treatment;

(e) Your particular condition and circumstances; and

(f) The treatment that is prescribed for your drug addiction or alcoholism.

22. A new § 404.1540 is added to read as follows:

§ 404.1540 Evaluating compliance with the treatment requirements.

(a) *General.* Generally, we will consider information from the treatment

institution or facility to evaluate your compliance with your treatment plan. The treatment institution or facility will:

(1) Monitor your attendance at and participation in treatment sessions;

(2) Provide reports of the results of any clinical testing (such as, hematological or urinalysis studies for individuals with drug addiction and hematological studies and breath analysis for individuals with alcoholism) when such tests are likely to yield important information;

(3) Provide observational reports from the treatment professionals familiar with your individual case (subject to verification and Federal confidentiality requirements); or

(4) Provide their assessment or views on your noncompliance with treatment requirements.

(b) *Measuring progress.* Generally, we will consider information from the treatment institution or facility to evaluate your progress in completing your treatment plan. Examples of milestones for measuring your progress with the treatment which has been prescribed for your drug addiction or alcoholism may include (but are not limited to)—

(1) Abstinence from drug or alcohol use (initial progress may include significant reduction in use);

(2) Consistent attendance at and participation in treatment sessions;

(3) Improved social functioning and levels of gainful activity;

(4) Participation in vocational rehabilitation activities; or

(5) Avoidance of criminal activity.

23. A new § 404.1541 is added to read as follows:

§ 404.1541 Establishment and use of referral and monitoring agencies.

We will contract with one or more agencies in each of the States, Puerto Rico and the District of Columbia to provide services to individuals whose disabilities are based on a determination that drug addiction or alcoholism is a contributing factor material to the determination of disability (as described in § 404.1535) and to submit information to us which we will use to make decisions about these individuals' benefits. These agencies will be known as referral and monitoring agencies.

Their duties and responsibilities include (but are not limited to)—

(a) Identifying appropriate treatment placements for individuals we refer to them;

(b) Referring these individuals for treatment;

(c) Monitoring the compliance and progress with the appropriate treatment of these individuals; and

(d) Promptly reporting to us any individual's failure to comply with treatment requirements as well as failure to achieve progress through the treatment.

For the reasons set forth in the preamble, part 416, subparts B, E, F, I, K, M, N, and Q of chapter III of title 20 of the Code of Federal Regulations are amended as set forth below.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

24. The authority citation for subpart B of part 416 continues to read as follows:

Authority: Secs. 1102, 1110(b), 1602, 1611, 1614, 1615(c), 1619(a), 1631, and 1634 of the Social Security Act; 42 U.S.C. 1302, 1310(b), 1381a, 1382, 1382c, 1382d(c), 1382h(a), 1383, and 1383c; secs. 211 and 212 of Pub. L. 93-66, 87 Stat. 154 and 155; sec. 502(a) of Pub. L. 94-241, 90 Stat. 268; and sec. 2 of Pub. L. 99-643, 100 Stat. 3574.

25. Section 416.202 is amended by redesignating paragraph (e) as paragraph (f) and adding a new paragraph (e) to read as follows:

§ 416.202 Who may get SSI benefits.

(e) You are disabled, drug addiction or alcoholism is a contributing factor material to the determination of disability (see § 416.935), and you have not previously received a total of 36 months of Social Security benefit payments when appropriate treatment was available or 36 months of SSI benefits on the basis of disability where drug addiction or alcoholism was a contributing factor material to the determination of disability.

26. Section 416.213 is revised to read as follows:

§ 416.213 You are disabled and drug addiction or alcoholism is a contributing factor material to the determination of disability.

(a) *If you do not comply with treatment requirements.* If you receive benefits because you are disabled and drug addiction or alcoholism is a contributing factor material to the determination of disability (see § 416.935), you must avail yourself of any appropriate treatment for your drug addiction or alcoholism at an approved institution or facility when this treatment is available and make progress in your treatment. You are not eligible for SSI benefits beginning with the month after the month you are notified in writing that we determined that you have failed to comply with the treatment requirements. If your benefits

are suspended because you failed to comply with treatment requirements, you will not be eligible to receive benefits until you have demonstrated compliance with treatment for a period of time, as specified in § 416.1326. The rules regarding treatment for drug addiction and alcoholism are in subpart I of this part.

(b) *If you previously received 36 months of SSI or Social Security benefits.* You are not eligible for SSI benefits by reason of disability on the basis of drug addiction or alcoholism as described in § 416.935 if—

(1) You previously received a total of 36 months of SSI benefits on the basis of disability and drug addiction or alcoholism was a contributing factor material to the determination of disability for months beginning March 1995, as described in § 416.935. Not included in these 36 months are months before March 1995 and months for which your benefits were suspended for any reason. The 36-month limit is no longer effective for months beginning after September 2004; or

(2) You previously received a total of 36 months of Social Security benefits counted in accordance with the provisions of § 404.316, 404.337, and 404.352 by reason of disability on the basis of drug addiction or alcoholism as described in § 404.1535.

27. Section 416.262 is amended by removing the word "and" at the end of paragraph (c), redesignating paragraph (d) as paragraph (e), and adding a new paragraph (d) to read as follows:

§ 416.262 Eligibility requirements for special SSI cash benefits.

(d) If your disability is based on a determination that drug addiction or alcoholism is a contributing factor material to the determination of disability as described in § 416.935, you have not yet received SSI cash benefits, special SSI cash benefits, or special SSI eligibility status for a total of 36 months, or Social Security benefit payments when treatment was available for a total of 36 months; and

28. Section 416.265 is amended by revising paragraph (a) to read as follows:

§ 416.265 Requirements for the special SSI eligibility status.

(a) You are blind or you continue to have a disabling impairment which, if drug addiction or alcoholism is a contributing factor material to the determination of disability as described in § 416.935, has not resulted in your receiving SSI cash benefits, special SSI

cash benefits, or special SSI eligibility status for a total of 36 months, or Social Security benefit payments when treatment was available for a total of 36 months;

29. The authority citation for subpart E of part 416 is revised to read as follows:

Authority: Secs. 1102, 1601, 1602, 1611(c), and (e), and 1631(a) through (d) and (g) of the Social Security Act; 42 U.S.C. 1302, 1381, 1381a, 1382 (c) and (e), and 1383 (a) through (d) and (g).

30. Section 416.535 is amended by redesignating paragraphs (b) and (c) as paragraphs (d) and (e) and adding a new paragraph (b) to read as follows:

§ 416.535 Underpayments and overpayments.

(b) *Additional rules for individuals whose drug addiction or alcoholism is a contributing factor material to the determination of disability.* When an individual whose drug addiction or alcoholism is a contributing factor material to the determination of disability, as described in § 416.935, receives less than the correct amount of SSI benefits, adjustment is effected as described in §§ 416.542 and 416.543 and the additional rule described in § 416.544 applies.

31. Section 416.542 is amended by revising paragraph (a) to read as follows:

§ 416.542 Underpayments—to whom underpaid amount is payable.

(a) *Underpaid recipient alive—underpayment payable.* (1) If an underpaid recipient is alive, the amount of any underpayment due him or her will be paid to him or her in a separate payment or by increasing the amount of his or her monthly payment.

(2) If an underpaid recipient whose drug addiction or alcoholism is a contributing factor material to the determination of disability (as described in § 416.935) is alive, the amount of any underpayment due the recipient will be paid through his or her representative payee in installment payments. No underpayment may be paid directly to the recipient. If the recipient dies before we have paid all benefits due through his or her representative payee, we will follow the rules which apply to underpayments for the payment of any remaining amounts due to any eligible survivor of a deceased recipient as described in paragraph (b) of this section.

32. A new § 416.544 is added to read as follows:

§ 416.544 Paying benefits in installments: Drug addiction or alcoholism.

(a) *General.* For disabled recipients who receive benefit payments through a representative payee because drug addiction or alcoholism is a contributing factor material to the determination of disability, certain amounts due the recipient for a past period will be paid in installments. The amounts subject to payment in installments include:

(1) benefits due but unpaid which accrued prior to the month payment was effectuated;

(2) benefits due but unpaid which accrued during a period of suspension for which the recipient was subsequently determined to have been eligible; and

(3) any adjustment to benefits which results in an accrual of unpaid benefits.

(b) *Installment formula.* Except as provided in paragraph (c) of this section, the amount of the installment payment in any month is limited so that the sum of (1) the amount due for a past period (and payable under paragraph (a) of this section) paid in such month and (2) the amount of any current benefit due cannot exceed twice the Federal Benefit Rate plus any federally-administered State supplementation payable to an eligible individual for the preceding month.

(c) *Exception to installment limitation.* An exception to the installment payment limitation in paragraph (b) of this section can be granted for the first month in which a recipient accrues benefit amounts subject to payment in installments if the recipient has unpaid housing expenses which result in a high risk of homelessness for the recipient. In that case, the benefit payment may be increased by the amount of the unpaid housing expenses so long as that increase does not exceed the amount of benefits which accrued during the most recent period of nonpayment. We consider a person to be at risk of homelessness if continued nonpayment of the outstanding housing expenses is likely to result in the person losing his or her place to live or if past nonpayment of housing expenses has resulted in the person having no appropriate personal place to live. In determining whether this exception applies, we will ask for evidence of outstanding housing expenses that shows that the person is likely to lose or has already lost his or her place to live. For purposes of this section, homelessness is the state of not being under the control of any public institution and having no appropriate personal place to live. Housing expenses

include charges for all items required to maintain shelter (for example, mortgage payments, rent, heating fuel, and electricity).

(d) *Payment through a representative payee.* If the recipient does not have a representative payee, payment of amounts subject to installments cannot be made until a representative payee is selected.

(e) *Underpaid recipient no longer eligible.* In the case of a recipient who is no longer currently eligible for monthly payments, but to whom amounts defined in paragraph (a) of this section are still owing, we will continue to make installment payments of such benefits through a representative payee.

(f) *Recipient currently not receiving SSI benefits because of suspension for noncompliance with treatment.* If a recipient is currently not receiving SSI benefits because his or her benefits have been suspended for noncompliance with treatment (as defined in § 416.936), the payment of amounts under paragraph (a) of this section will stop until the recipient has demonstrated compliance with treatment as described in § 416.1326 and will again commence with the first month the recipient begins to receive benefits.

(g) *Underpaid recipient deceased.* Upon the death of a recipient, any remaining unpaid amounts as defined in paragraph (a) of this section will be treated as underpayments in accordance with § 416.542(b).

33. Section 416.558 is amended by revising paragraph (a) and adding a new paragraph (c) to read as follows:

§ 416.558 Notice relating to overpayments and underpayments.

(a) *Notice of overpayment and underpayment determination.* Whenever a determination concerning the amount paid and payable for any period is made and it is found that, with respect to any month in the period, more or less than the correct amount was paid, written notice of the correct and incorrect amounts for each such month in the period will be sent to the individual against whom adjustment or recovery of the overpayment as defined in § 416.537(a) may be effected or to whom the underpayment as defined in §§ 416.536 and any amounts subject to installment payments as defined in § 416.544 would be payable, notwithstanding the fact that part or all of the underpayment must be withheld in accordance with § 416.543. When notifying an individual of a determination of overpayment, the Social Security Administration will, in the notice, also advise the individual that adjustment or recovery is required,

as set forth in § 416.571, except under certain specified conditions, and of his or her right to request waiver of adjustment or recovery of the overpayment under the provisions of § 416.550.

* * * * *

(c) *Notice relating to installment payments to individuals whose drug addiction or alcoholism is a contributing factor material to the determination of disability.* Whenever a determination is made concerning the amount of any benefits due for a period that must be paid in installments, the written notice will also explain the amount of the installment payment and when an increased initial installment payment may be made (as described in § 416.544). This written notice will be sent to the individual and his or her representative payee.

34. The authority citation for subpart F of part 416 continues to read as follows:

Authority: Secs. 1102 and 1631(a)(2) and (d)(1) of the Social Security Act; 42 U.S.C. 1302 and 1383(a)(2) and (d)(1).

35. Section 416.601 is amended by revising the last sentence of paragraph (b)(1) to read as follows:

§ 416.601 Introduction.

* * * * *

(b) *Policy used to determine whether to make representative payment.* * * * However, we must select a representative payee for an individual who is eligible for benefits solely on the basis of disability if drug addiction or alcoholism is a contributing factor material to the determination of disability.

* * * * *

36. Section 416.610 is amended by revising paragraph (a)(3) to read as follows:

§ 416.610 When payment will be made to a representative payee.

(a) * * *

(3) Eligible for benefits solely on the basis of disability and drug addiction or alcoholism is a contributing factor material to the determination of disability.

* * * * *

37. The authority citation for subpart I of part 416 is revised to read as follows:

Authority: Secs. 1102, 1611, 1614(a), 1619, 1631 (a), (c), and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382, 1382c(a), 1382h, 1383 (a), (c), and (d)(1), and 1383b; secs. 2, 5, 6, and 15 of Pub. L. 98-460, 98 Stat. 1794, 1801, 1802, and 1808.

38. Section 416.935 is revised to read as follows:

§ 416.935 How we will determine whether your drug addiction or alcoholism is a contributing factor material to the determination of disability.

(a) *General.* If we find that you are disabled and have medical evidence of your drug addiction or alcoholism, we must determine whether your drug addiction or alcoholism is a contributing factor material to the determination of disability, unless we find that you are eligible for benefits because of your age or blindness.

(b) *Process we will follow when we have medical evidence of your drug addiction or alcoholism.*

(1) The key factor we will examine in determining whether drug addiction or alcoholism is a contributing factor material to the determination of disability is whether we would still find you disabled if you stopped using drugs or alcohol.

(2) In making this determination, we will evaluate which of your current physical and mental limitations, upon which we based our current disability determination, would remain if you stopped using drugs or alcohol and then determine whether any or all of your remaining limitations would be disabling.

(i) If we determine that your remaining limitations would not be disabling, we will find that your drug addiction or alcoholism is a contributing factor material to the determination of disability.

(ii) If we determine that your remaining limitations are disabling, you are disabled independent of your drug addiction or alcoholism and we will find that your drug addiction or alcoholism is not a contributing factor material to the determination of disability.

39. Section 416.936 is revised to read as follows:

§ 416.936 Treatment required for individuals whose drug addiction or alcoholism is a contributing factor material to the determination of disability.

(a) If we determine that you are disabled and drug addiction or alcoholism is a contributing factor material to the determination of disability, you must avail yourself of appropriate treatment for your drug addiction or alcoholism at an institution or facility approved by us when this treatment is available and make progress in your treatment. Generally, you are not expected to pay for this treatment. You will not be paid benefits for any month after the month we have notified you in writing that—

(1) You did not comply with the terms, conditions and requirements of

the treatment which has been made available to you; or

(2) You did not avail yourself of the treatment after you had been notified that it is available to you.

(b) If your benefits are suspended for failure to comply with treatment requirements, your benefits can be reinstated in accordance with the rules in § 416.1326.

40. Section 416.937 is revised to read as follows:

§ 416.937 What we mean by appropriate treatment.

By appropriate treatment, we mean treatment for drug addiction or alcoholism that serves the needs of the individual in the least restrictive setting possible consistent with your treatment plan. These settings range from outpatient counseling services through a variety of residential treatment settings including acute detoxification, short-term intensive residential treatment, long-term therapeutic residential treatment, and long-term recovery houses. Appropriate treatment is determined with the involvement of a State licensed or certified addiction professional on the basis of a detailed assessment of the individual's presenting symptomatology, psychosocial profile, and other relevant factors. This assessment may lead to a determination that more than one treatment modality is appropriate for the individual. The treatment will be provided or overseen by an approved institution or facility. This treatment may include (but is not limited to)—

(a) Medical examination and medical management;

(b) Detoxification;

(c) Medication management to include substitution therapy (e.g., methadone);

(d) Psychiatric, psychological, psychosocial, vocational, or other substance abuse counseling in a residential or outpatient treatment setting; or

(e) Relapse prevention.

41. Section 416.938 is revised to read as follows:

§ 416.938 What we mean by approved institutions or facilities.

Institutions or facilities that we may approve include—

(a) An institution or facility that furnishes medically recognized treatment for drug addiction or alcoholism in conformity with applicable Federal or State laws and regulations;

(b) An institution or facility used by or licensed by an appropriate State agency which is authorized to refer

persons for treatment of drug addiction or alcoholism;

(c) State licensed or certified care providers;

(d) Programs accredited by the Commission on Accreditation for Rehabilitation Facilities (CARF) and/or the Joint Commission for the Accreditation of Healthcare Organizations (JCAHO) for the treatment of drug addiction or alcoholism;

(e) Medicare or Medicaid certified care providers; or

(f) Nationally recognized self-help drug addiction or alcoholism recovery programs (e.g., Alcoholics Anonymous or Narcotics Anonymous) when participation in these programs is specifically prescribed by a treatment professional at an institution or facility described in paragraphs (a) through (e) of this section as part of an individual's treatment plan.

42. Section 416.939 is revised to read as follows:

§ 416.939 How we consider whether treatment is available.

Our determination about whether treatment is available to you for your drug addiction or your alcoholism will depend upon—

(a) The capacity of an approved institution or facility to admit you for appropriate treatment;

(b) The location of the approved institution or facility, or the place where treatment, services or resources could be provided to you;

(c) The availability and cost of transportation for you to the place of treatment;

(d) Your general health, including your ability to travel and capacity to understand and follow the prescribed treatment;

(e) Your particular condition and circumstances; and

(f) The treatment that is prescribed for your drug addiction or alcoholism.

43. A new § 416.940 is added to read as follows:

§ 416.940 Evaluating compliance with the treatment requirements.

(a) *General.* Generally, we will consider information from the treatment institution or facility to evaluate your compliance with your treatment plan. The treatment institution or facility will—

(1) Monitor your attendance at and participation in treatment sessions;

(2) Provide reports of the results of any clinical testing (such as, hematological or urinalysis studies for individuals with drug addiction and hematological studies and breath analysis for individuals with

alcoholism) when such tests are likely to yield important information;

(3) Provide observational reports from the treatment professionals familiar with your individual case (subject to verification and Federal confidentiality requirements); or

(4) Provide their assessment or views on your noncompliance with treatment requirements.

(b) *Measuring progress.* Generally, we will consider information from the treatment institution or facility to evaluate your progress in completing your treatment plan. Examples of milestones for measuring your progress with the treatment which has been prescribed for your drug addiction or alcoholism may include (but are not limited to)—

(1) Abstinence from drug or alcohol use (initial progress may include significant reduction in use);

(2) Consistent attendance at and participation in treatment sessions;

(3) Improved social functioning and levels of gainful activity;

(4) Participation in vocational rehabilitation activities; or

(5) Avoidance of criminal activity.

44. A new § 416.941 is added to read as follows:

§ 416.941 Establishment and use of referral and monitoring agencies.

We will contract with one or more agencies in each of the States and the District of Columbia to provide services to individuals whose disabilities are based on a determination that drug addiction or alcoholism is a contributing factor material to the determination of disability (as described in § 416.935) and to submit information to us which we will use to make decisions about these individuals' benefits. These agencies will be known as referral and monitoring agencies. Their duties and responsibilities include (but are not limited to)—

(a) Identifying appropriate treatment placements for individuals we refer to them;

(b) Referring these individuals for treatment;

(c) Monitoring the compliance and progress with the appropriate treatment of these individuals; and

(d) Promptly reporting to us any individual's failure to comply with treatment requirements as well as failure to achieve progress through the treatment.

45. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382,

1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93-66, 87 Stat. 154.

46. Section 416.1123 is amended by revising paragraph (d) to read as follows:

§ 416.1123 How we count unearned income.

* * * * *

(d) *Retroactive monthly social security benefits.* We count retroactive monthly social security benefits according to the rule in paragraph (d)(1) of this section, unless the exception in paragraph (d)(2) of this section applies:

(1) *Periods for which SSI payments have been made.* When you file an application for social security benefits and retroactive monthly social security benefits are payable on that application for a period for which you also received SSI payments (including federally-administered State supplementary payments), we count your retroactive monthly social security benefits as unearned income received in that period. Rather than reducing your SSI payments in months prior to your receipt of a retroactive monthly social security benefit, we will reduce the retroactive social security benefits by an amount equal to the amount of SSI payments (including federally-administered State supplementary payments) that we would not have paid to you if your social security benefits had been paid when regularly due rather than retroactively (see § 404.408b(b)). If a balance is due you from your retroactive social security benefits after this reduction, for SSI purposes we will not count the balance as unearned income in a subsequent month in which you receive it. This is because your social security benefits were used to determine the amount of the reduction. This exception to the unearned income counting rule does not apply to any monthly social security benefits for a period for which you did not receive SSI.

(2) *Social security disability benefits where drug addiction or alcoholism is a contributing factor material to the determination of disability.* If your retroactive social security benefits must be paid in installments because of the limitations on paying lump sum retroactive benefits to disabled recipients whose drug addiction or alcoholism is a contributing factor material to the determination of disability as described in § 404.480, we will count the total of such retroactive social security benefits as unearned income in the first month such installments are paid, except to the extent the rule in paragraph (d)(1) of

this section would provide that such benefits not be counted.

* * * * *

47. The authority citation for subpart M of part 416 continues to read as follows:

Authority: Secs. 1102, 1611 through 1615, 1619, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382 through 1382d, 1382h, and 1383.

48. Section 416.1326 is revised to read as follows:

416.1326 Suspension for failure to comply with treatment for drug addiction or alcoholism.

(a) *Basis for Suspension.* If you are disabled and drug addiction or alcoholism is a contributing factor material to the determination of disability as described in § 416.935, we will refer you to appropriate treatment as defined in § 416.937. You will not be an eligible individual and we will suspend your benefits if you do not comply with the terms, conditions and requirements of treatment prescribed by the institution or facility. (See § 416.940 which explains how we evaluate compliance with treatment.)

(b) *Date of Suspension.* We will suspend your benefits for a period starting with the first month after we notify you in writing that you failed to comply with prescribed treatment.

(c) *Resumption of Benefits.* If you are complying with prescribed treatment and are otherwise eligible for benefits, we will resume benefits effective with the first day of the month after you demonstrate and maintain compliance with appropriate treatment for these periods—

(1) 2 consecutive months for the first determination of noncompliance;

(2) 3 consecutive months for the second determination of noncompliance; and

(3) 6 consecutive months for the third and all subsequent determinations of noncompliance.

49. Section 416.1331 is amended by adding new paragraphs (c), (d), and (e) to read as follows:

§ 416.1331 Termination of your disability or blindness payments.

* * * * *

(c) *When benefits terminate due to 12 consecutive suspension months for failure to comply with treatment for drug addiction or alcoholism.* If you are disabled and drug addiction or alcoholism is a contributing factor material to the determination of disability as described in § 416.935, your benefits will terminate after 12 consecutive months of suspension for

noncompliance with treatment requirements as described in § 416.1326.

(d) *When benefits terminate due to payment of 36 months of benefits based on disability when drug addiction or alcoholism is a contributing factor material to the determination of disability.* If you are disabled and drug addiction or alcoholism is a contributing factor material to the determination of disability as described in § 416.935, your benefits will terminate after you receive a total of 36 months of SSI benefits. The 36-month limit is no longer effective for benefits for months beginning after September 2004.

(e) *Months we count in determining the 36 months of benefits when drug addiction or alcoholism is a contributing factor material to the determination of disability.* Beginning March 1995, we will count all months for which you were paid an SSI benefit, a federally-administered State supplement, a special SSI cash benefit, or you were in special SSI eligibility status, toward the 36 months described in paragraph (d) of this section. Months for which you were not eligible for benefits will not count toward the 36 months.

50. Section 416.1335 is revised to read as follows:

§ 416.1335 Termination due to continuous suspension.

We will terminate your eligibility for benefits following 12 consecutive months of benefit suspension for any reason beginning with the first month you were no longer eligible for regular SSI cash benefits, federally-administered State supplementation, special SSI cash benefits described in § 416.262, or special SSI eligibility status described in § 416.265. We will count the 12-month suspension period either from the start of the first month you are no longer receiving your cash benefits (see § 416.1321(a)) or the start of the month after the month your special SSI eligibility status described in § 416.265 ended. This termination is effective with the start of the 13th month after the suspension began.

51. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 1102, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1383, and 1383b.

52. Section 416.1402 is amended by revising paragraph (d) to read as follows:

§ 416.1402 Administrative actions that are initial determinations.

* * * * *

(d) Whether payments will be made, on your behalf, to a representative payee, unless you are under age 18, legally incompetent, or you are disabled

and drug addiction or alcoholism is a contributing factor material to the determination of disability;

* * * * *

53. The authority citation for subpart Q of part 416 is revised to read as follows:

Authority: Secs. 1102, 1611(e)(3), 1615, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382(e)(3), 1382d, and 1383.

54. Section 416.1725 is revised to read as follows:

§ 416.1725 Effect of your failure to comply with treatment requirements for your drug addiction or alcoholism.

(a) *Suspension of benefits.* Your eligibility for benefits will be suspended beginning with the first month after we notify you in writing that we have determined that you have failed to comply with the treatment requirements for your drug addiction or alcoholism as defined in § 416.940. Your benefits will be suspended and reinstated in accordance with the provisions in § 416.1326.

(b) *Termination of benefits.* If your benefits are suspended for 12 consecutive months for failure to comply with treatment in accordance with § 416.1326, your eligibility for disability benefits will be terminated in accordance with § 416.1331.

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