CONSORTIUM FOR CITIZENS WITH DISABILITIES

January 16, 2020

The Honorable Andrew Saul
Commissioner of Social Security
6401 Security Boulevard
Baltimore, MD 21235-6401

Submitted via www.regulations.gov

Re: Notice of Proposed Rulemaking on Rules Regarding the Frequency and Notice of Continuing Disability Reviews, 84 Fed. Reg. 36588 (November 18, 2019), Docket No. SSA-2018-0026, RIN 0960-AI27

Dear Commissioner Saul:

These comments are submitted by the undersigned co-chairs of the Social Security Task Force of the Consortium for Citizens with Disabilities (CCD). CCD is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. Since 1973, CCD has advocated on behalf of people of all ages with physical and mental disabilities and their families.

We agree that the Social Security Administration (SSA) is required by Congress to perform periodic Continuing Disability Reviews (CDR) on recipients of Supplemental Security Income (SSI) or Title II Social Security benefits awarded on the basis of disability. We also agree with SSA that no changes to the current Medical Improvement Review Standard are appropriate.

However, we have significant concerns about SSA's proposal to perform more CDRs, more frequently. As discussed below, given a lack of data or evidence, we found the proposed rule so vague that people with disabilities, and others who wish to comment on it, cannot do so in a meaningful way. We urge SSA to withdraw this rule since it fails to comply with the Administrative Procedure Act.

We will also take the opportunity to discuss how the CDR process impacts people with disabilities and concerns we have with the aspects of the rule. In short, the CDR process is burdensome and stressful for people with disabilities, their families, and the service providers who assist them. Performing CDRs more frequently will increase that burden, a factor that SSA does not accurately or sufficiently address.

CDRs are a burden on beneficiaries.

Everyone who receives a CDR has been found disabled by SSA, meaning they have one or more severe and medically determinable impairment that will last at least one year or be fatal. Some of these disabilities, including intellectual disabilities and mental health disabilities, directly impact an individual's ability to respond to forms and will require additional assistance from service providers or family members to complete. In addition, disability beneficiaries are often older and have lower income, less stable housing situations, and less education than the general population, providing additional challenges when they need to fill out CDR paperwork and submit supporting documents like medical records. For children undergoing CDRs, the burden on families and service providers is substantial—adults must take time off of work and children must take time out of school for medical appointments in response to the form.

The full medical CDR form is burdensome in and of itself. It is 15 pages long and requires multiple stamps to be mailed back to SSA. It requires beneficiaries to write short essays, report all the medication they take and all of the medical treatments and providers they attend, and all of their daily activities. For adults and children with disabilities, this is usually a huge amount of information. It asks for detailed summaries of the medical treatment received over the past 12 months, information that the individual themselves is unlikely to know in the detail required and thus necessitating assistance from health care professionals or other service providers. While it would be challenging and time-consuming for anyone to fill out, many of those who will need to fill it out have disabilities that will add additional complexity.

CDRs are also costly to beneficiaries, who often need to pay for medical records or appointments with their doctors and other providers to fill out forms. Although some states require medical records be provided free to Social Security disability claimants, this does not extend to beneficiaries undergoing CDRs. Beneficiaries may need to hire representatives to assist them in completing CDR paperwork or proceeding through multiple levels of appeals.

Not completing CDR paperwork or doing so incorrectly can jeopardize benefits that are a matter of life and death to people with disabilities—not only Social Security benefits, but also other critical benefits such as Medicare, Medicaid, housing assistance, and food assistance that are tied to SSA's finding of disability. Those who are found to have medically improved, and those who were deemed noncompliant with the CDR process, have only 10 days to elect continuation of benefits while they appeal. If they don't, they can be without income or health insurance for months or years; receiving retroactive benefits once appeals are completed does not fix the problems of people with disabilities who will go without needed medication and health care, lose their housing, go into debt, or declare bankruptcy. Those who do elect continuing benefits may be faced with overpayments withheld from future Social Security benefits, tax refunds, or other sources.

SSA should not force beneficiaries to experience the burden of a CDR more frequently or place beneficiaries more at risk of incorrectly losing their benefits without evidence that doing so will improve program integrity and outcomes for beneficiaries and conform to the Social Security Act. Unfortunately, the proposed rule offers no such evidence. Even more concerning, the proposed rule almost entirely fails to consider the impact that the NPRM would have on beneficiaries. It does not even provide an estimate for how many individuals will lose benefits, how many of those individuals are children, and how many individuals will have benefits reinstated at reconsideration

or on appeal. SSA is completely ignoring a crucial impact that the rule will have on adults and children with disabilities.

The proposed rule lacks evidence to establish that the proposed change is necessary.

The NPRM proposes three buckets of changes and offers different justifications for each. Unfortunately, these justifications fail to provide sufficient data to allow us to effectively comment. Despite the substantial burden the changes place on beneficiaries by the proposed rule, SSA has failed to provide evidence that the changes are necessary or are based on evidence.

1) Expanding the Medical Diary Categories From Three to Four

    i) The Agency's Experience Over Time

SSA bases the change to the number of diary categories on the agency's "experience over time administrating CDRs in the existing three categories" and their own analysis of "CDR case outcomes for MIE diaries." The supplementary documentary evidence provided, entitled "Cessation Rates by Impairment" (cited at fn 36 of the NPRM) includes only the average of 3 years of data, from 2014 to 2016, and lists only 15 impairments. Since the current CDR rule has been in place since 1986, it is unclear why SSA is not providing more historical data and demonstrating trends that might show clear treatment improvement. In addition, the failure to detail how many individuals make up the percentage figures listed, render it impossible to comment on the accuracy of the data. A cessation rate of 52.3 percent might be high, but is less significant when it represents 20 people rather than thousands. We do not even know how many cessations were based on FMR or if the cessations all came from medical improvement versus other reasons for terminating disability benefits (like the beneficiary dying or reaching full retirement age).

The supplementary document entitled "Cessation Rates by Diary Category" (cited at fn 38 of the NPRM) only provides one year of data, which is now over three years old. It also fails to show the number of CDRs performed in each category, whether it includes all CDRs or just FMRs, or if the cessations all came from medical improvement versus other reasons for terminating disability benefits. It only lists 17 impairments and leaves out many impairments proposed for the MIE and MIL categories, including hearing loss treated with cochlear implantation, skeletal cancers treated with multimodal therapy, heart transplant, gastrointestinal hemorrhaging, chronic liver disease, liver transplantation, chronic kidney disease with transplant, low birth weight, pediatric genitourinary disorders, bone marrow or stem cell transplants, cancer of the testes, eating disorders, and HIV.

For every disabled worker whose disability benefits were terminated for medical improvement in Fiscal Year 2018, more than five disabled workers died and more than ten reached full retirement age. SSA has not provided data on what CDR category the relatively small number of disabled workers found to have medically improved were placed in, what their impairments were, how CDR outcomes differ for people who receive SSI instead of or concurrently with SSDI, or whether CDRs occurred as scheduled.

ii. The New Category Allowing for Post-Health Care Assessment

We are also confused by SSA's comment that the new two-year Medical Improvement Likely diary category "will allow [SSA] to assess MI after some beneficiaries benefit from access to health care through Medicare or Medicaid." While individuals eligible for SSI will be able to access Medicaid, not only do individuals who are eligible for SSDI face a 24-month wait for Medicare benefits, they also face a five-month wait for SSDI. In states without Medicaid expansion, these individuals will have extremely limited health insurance options and their conditions may worsen. Does SSA plan to geographically differentiate to ensure that they are not placing additional burdens on these individuals? In addition, Medicaid varies from state to state and not all states provide the most advanced treatment mechanisms. Does SSA's analysis take into account this variation?

iii. Potential Employment Effects

SSA itself states in the NPRM that the agency cannot quantify the effects of more frequent CDRs on workforce participation. Research by SSA staff that followed disabled workers terminated for medical improvement for five years show that 63% had at least one year with no earnings at all, and only 20% earned more than the substantial gainful activity threshold in all five years. SSA seems to think this number is substantial, but does not address the 80% of beneficiaries who could not sustain substantial gainful activity over the five-year period: for many of whom, the overall increase in earnings did not make up for the loss of benefits. The T.J. Moore article cited in the NPRM is 25 years old and applies to a different group of people (those terminated when SSA no longer recognized drug or alcohol addiction as qualifying impairments) but even that study found that nearly 4 out of 5 people who lost their benefits spent the entire three-year study period with earnings below the SGA level. After those three years, employment decreased further. There is simply no evidence that terminating people's benefits makes them financially better off, that they return to the workforce in any significant numbers, or that they have any significant level of earnings.

Similarly, SSA has no evidence that terminating benefits faster encourages people to return to work. The NPRM's data is about people who left the workforce for any reason—having a baby, inheriting a billion dollars, global recessions, etc.—not those whose chronic or terminal disabilities made them unable to perform substantial gainful activity. Even the NPRM acknowledges the correlation between time out of the workforce and return to SGA-level work is "modest," and admits that there is no evidence of causation. The supplemental material (cited at fn 44 of the NPRM) does not even address SGA, instead randomly defining employment as annual earnings above $1,000.

To the extent that CDRs remove people from the disability rolls, this is often because beneficiaries' impairments make it difficult for them to understand and comply with the CDR process, not because their impairments have improved in a way that dictates cessation. The people who are bureaucratically disenfranchised in such a way are unlikely to join the workforce after cessation: the same barriers (literacy, memory, executive function, etc.) to participating in the CDR process, which were often the grounds for award of disability benefits in the first place, will remain barriers to employment even after termination. If anything, termination of financial and health-care benefits may lead to crises such as eviction, homelessness, hospitalization, bankruptcy, incarceration, declining health, and extreme poverty—all of which make locating and maintaining employment more challenging than it otherwise might be.

2) Revising the Criteria We Follow to Assign Each Diary Category

Similarly, the NPRM does not provide any data, evidence, or studies to support SSA's proposals regarding how they chose to assign cases to diary entries.

The supporting documents (cited at fn 63 and 66 of the NPRM) and the NPRM do not explain how some conditions were chosen for the new MIL category. It seems arbitrary: for example, anxiety disorders and leukemias are both proposed to be scheduled in the MIL category, even though the former's cessation rate is 24.2% and the latter's is 63.7% (according to SSA's insufficient data); the former has a higher cessation rate for people currently placed in the MIE diary and the latter has a higher cessation rate for those placed in the MIP diary. It is not possible to determine if the difference is statistically significant, there is not data from other impairments to compare with the 17 impairments in the document, and there is only a single year of data provided—which is now more than three years old.

The NPRM makes mention of medical advances but does not say what they are or for which conditions they are used. It does not explain whether the treatments are widely available or why SSA thinks these treatments could improve beneficiary's health to the point that their benefits should be terminated for medical improvement. SSA held a National Disability Forum on "What Impairments Have a Likelihood to Improve?" but it did so after the NPRM was published. None of the forum's speakers identified advances that were the standard of care and that restored people's ability to perform substantial gainful activity.

The proposed rule does not explain how people with multiple impairments will be placed into CDR categories, even though 71% of SSDI claimants in 2009 had more than one impairment and 64% of ALJ awards between 1997 and 2000 were for claimants with three or more impairments.[1]

The proposed rule also does not explain whether or how beneficiaries will be moved to different CDR categories as their ages change or if they develop new conditions, though the former circumstance is inevitable and the latter is likely.

The proposed rule does not provide any detail of how a beneficiary's age, functional limitations, and time outside of the workforce will be considered for placement in the MINE category. For example, what is the age that qualifies for such placement, is it the same age for each of the 17 listed disorders, what functional limitations are considered in the decision, how much time outside of the workforce is qualifying (and what "time outside of the workforce" means—if it is annual earnings above $1000 as in the supplementary document referenced in the NPRM, that would be a significant work disincentive), and how these three criteria will be considered together.

The NPRM provides no rationale, criteria, or evidence for how SSA chose ten conditions where a beneficiary's age will lead to placement in MINE instead of a different CDR category, and seven other conditions where the beneficiary's age and time outside of the workforce will both be considered. SSA's current policy, which the NPRM states is based on the agency's "analysis of case outcomes for CDRs on older beneficiaries," is to use the MINE category "for cases in which

[1] Elisa Walker and Emily Roessel, "Social Security Disability Insurance and Supplemental Security Income Beneficiaries with Multiple Impairments" Social Security Bulletin, https://www.ssa.gov/policy/docs/ssb/v79n3/v79n3p21.html.

the person would be age 54 1/2 or older when a CDR diary would be due." The NPRM does not provide any rationale for ending this evidence-based policy and instead placing the older individuals awarded at Step 5 of the sequential evaluation process into the MIL category. SSA's evidence in the docket shows that in the general population, the older people are when they leave the workforce, the less likely they are to return—even without impairments that lead to an award of disability benefits. This supports the idea included in the Social Security Act that age is a relevant vocational factor across all types of disabilities, and is a reason to reject the proposed rule.

The NPRM also does not provide any data, evidence, or rationale for reviewing people awarded benefits at step 5 of the sequential disability evaluation process more frequently. The supplementary documents detailing cessation rates (cited at fns 36 and 38 of the NPRM) do not explain whether the beneficiaries mentioned were awarded at Step 3 or Step 5. Thus assigning cases awarded at Step 5 of the sequential evaluation process to MIL diaries is not supported by any evidence, even the insufficient evidence provided by SSA. By law, meeting a listing at Step 3 or having a combination of medical and vocational factors that preclude work at Step 5 are equivalent for demonstrating disability. The proposal would treat beneficiaries—including those with the same impairments—differently but doesn't give any evidence to support this change. We have found no evidence that people awarded benefits at Step 3 versus Step 5 differ in their likelihood of medical improvement or their future earnings capacity.

Likewise, the NPRM does not explain why most children should have CDRs when they turn 6 or 12 years old, or how SSA will handle situations where the disability determination occurred close to the child's 6th or 12th birthday. If an ALJ hearing occurs when a child is 11 years and 8 months old, and the fully favorable decision is sent when the child is 11 years and 10 months old, and the child first receives benefits the day before his 12th birthday, is a CDR appropriate the following day? SSA provides no evidence to demonstrate that it is, and provides no indication that it would not perform such a review. The NPRM seems to base this proposal on the idea (unsupported by evidence) that at these points in time, children are "approaching a chronological age with key developmental activities." This idea would, in fact, argue the opposite since children undergoing transitions into new settings or other major life changes would likely be at non-stable points. For instance, a child with asthma who begins school may in fact see a worsening of the condition while the new situation settles. Adding the burden of a CDR to a child and family during a key developmental period might in fact worsen the child's situation by requiring time and effort from caretakers that could otherwise be focused on the child.

Finally, the NPRM does not explain the CDR category that will be used for many common conditions. It does not say whether people with diabetes, essential hypertension, personality disorders, osteoarthrosis and allied disorders, chronic pulmonary insufficiency, chronic ischemic heart disease, or other conditions that are among the top 20 most common among disability claimants will be reviewed every six months, every seven years, or somewhere in between. It is not possible to provide meaningful comments on such a vague rule.

Given the lack of data and lack of sufficient data, we are unable to effectively comment on SSA's proposal. It seems that the NPRM is placing particular categories of beneficiaries into different diary categories without justification, in an arbitrary and capricious manner.

3) The Frequency of a CDR for Each of the Four Medical Diary Categories

i. Decreasing MINE 7-year review cycle to a 6-year review cycle.

We are confused by SSA's decision to modify the MINE category for permanent impairments from the current 5 to 7-year window. SSA acknowledges that under the current rules "[a]ll individuals with permanent impairments will be assigned to a 7-year review cycle" and that since implementing the current rules in 1986, SSA has "not used a shorter review period for permanent impairments." We believe this indicates that SSA has consistently utilized a 7-year review cycle for the past 34 years. However, because SSA has "not identified any permanent impairment for which a 5-year review period is medically appropriate" the agency proposes "to set the review period for permanent impairments, that is, the MINE diary, at 6 years in order to identify such improvement at its earliest point while providing enhanced consistency and clarity surrounding the review cycle's timeline." We do not understand the evidentiary basis for this change. The agency does not say that a 6-year review period is medically appropriate. It identifies a 5-year review period as not medically appropriate, but says nothing about the propriety of the current 7 year review period. While such a change does not seem huge, for someone with an intellectual disability or another lifelong disability who might rely on benefits for decades, it would mean more CDRs over the course of their lifetime, without any justification. The lack of any evidence provided to suggest that the particular change is necessary means that we cannot comment on this proposed change, but we are extremely concerned that this change lacks any logical consistency.

ii. Increasing the frequency of CDRs.

We also have several concerns about the increased frequency of CDRs that are not answered or even addressed in this proposed rule. Most importantly, CDRs are often not decided correctly. Even when disability beneficiaries are found to have medically improved, this determination is often overturned on appeal. According to SSA's annual report to Congress, 71.6% of initial cessations of disabled worker benefits in FY 2015 that were appealed were overturned at reconsideration, with additional cases overturned after ALJ hearings, Appeals Council review, or federal court appeals. In years where a majority of ALJ hearings had been completed, approximately one-third to one-half resulted in continuation of benefits. Cessations are also overturned by the Appeals Council and in federal court. If SSA increases the number and frequency of CDRs, the agency will impoverish more people who will ultimately demonstrate their benefits should have continued.

The NPRM does not explain what will happen if a new CDR is scheduled while a prior CDR is still pending. This may happen frequently: it is common for CDRs to take longer than six months, and those that require appeals often take several years. Beneficiaries in categories other than MINE are especially at risk of undergoing overlapping CDRs, which would be confusing to the beneficiary and inefficient for SSA. The risk of termination for failure to comply with overlapping CDRs is extremely high. Beneficiaries are likely to struggle to make timely requests for statutory benefit continuation during overlapping CDRs, and SSA's staff and systems may not be able to accurately record these requests.

The NPRM does not explain how SSA will handle the large number of cases where beneficiaries have multiple impairments, or when beneficiaries develop new impairments after the award of disability benefits.

SSA predicts that the increased frequency under these proposed changes would equal 2.6 million additional CDRs from FY 2020-2029. This is a huge increased burden on the agency and we are particularly concerned because SSA already has serious challenges performing CDRs, including:

- Beneficiaries and their representatives cannot view files or submit new evidence electronically.
- DHO hearings are scheduled with far less than the 75 days' notice required for ALJ hearings, despite the equal importance and complexity of both types of hearings.
- SSA already has difficulty obtaining medical evidence in CDR cases. The agency was not even able to state in the NPRM how often they request such evidence, let alone how often their policy of sending two written requests 15 days apart results in the evidence being submitted.
- For years, advocates have highlighted SSA's ongoing and widespread inability to locate and associate comparison point decisions when performing CDRs.
- SSA is frequently unable to send CDR paperwork to the beneficiary's current address. As you noted in your November 4, 2019 letter to the public, "Did you know we store a beneficiary's address in something close to 20 different systems? If you move, we can change your address in one place but that may not change it in the others." Sending mail to the wrong address puts beneficiaries at grave risk of losing their Social Security and Medicare benefits for "failure to cooperate" despite the only failure being SSA's.
- SSA often falls behind its currently scheduled CDRs and only with increased funding from Congress can SSA maintain the current schedule.

SSA should focus its efforts on fixing these well-known and longstanding problems rather than compounding them with a massive increase in the number of CDRs it plans to perform.

Given these enormous gaps in evidence to support all three proposed changes in the proposed rule and questions about how the rule will actually work, it is not possible to provide detailed comments on them. Using the POMS or other subregulatory guidance documents to clarify these issues is a complete subversion of the APA's notice and comment policies and the two Executive Orders signed on October 9, 2019.[2] CDR diary policy binds the public: it forces millions of people each year to take action (completing and submitting paperwork, gathering evidence, attending hearings, choosing whether to elect benefit continuation, etc.) at the risk of losing crucial financial and health-care benefits. Leaving key details of the policy out of the public eye without opportunity for public input is a repudiation of both Congress and the President.

To summarize, all three of changes proposed by the NPRM lack an evidentiary basis and this omission violates the Administrative Procedure Act because the public has been deprived of its right to meaningful notice and the ability to submit meaningful comments. We urge the Agency to withdraw this incomplete rule.

[2] https://www.whitehouse.gov/presidential-actions/executive-order-promoting-rule-law-transparency-fairness-civil-administrative-enforcement-adjudication/ and https://www.whitehouse.gov/presidential-actions/executive-order-promoting-rule-law-improved-agency-guidance-documents/.

The proposed rule has costs not forecast by the NPRM.

In addition to the lack of evidence supporting the substantive provisions of the rule, we are particularly concerned that the NPRM fails to accurately forecast the costs of this rule. SSA estimates the anticipated costs to the public and to SSA and to programs of the proposed rule. Each of these estimates is not comprehensive.

1) Estimated Costs to Programs

The NPRM estimates increased program integrity expenditures but fails to take into account increased costs for which program integrity funds cannot be used. For example, implementing the proposed rule would require SSA to process additional disability, early retirement, and survivors' claims for people who are undergoing CDRs or whose benefits have been ceased. Since 20% of disabled workers and 30% of SSI recipients whose benefits were terminated for medical improvement received benefits again within 8 years,[3] an even higher percentage is likely to reapply. The auxiliary beneficiaries of a disabled worker may also apply for benefits when a worker's benefits are ceased.

When people lose their disability benefits, in many cases they will become eligible for needs-based benefits or qualify for larger amounts of benefits. This is especially true given the proposal's disproportionate effect on recipients of SSI, who by definition have extremely low income and assets. This proposal therefore should consider the offsetting programmatic and administrative costs to federally-funded programs such as SNAP, housing and homelessness assistance, TANF, WIC, LIHEAP, etc. as well as to state and local programs that serve low-income individuals and households.

SSA does not provide a estimated number of individuals who they anticipate will lose benefits. Presumably the agency must have developed that estimate in order to estimate the decreases in benefit payments, but we cannot comment on that estimate since it is not provided in the NPRM. If SSA estimated costs without determining how many people would lose benefits, the agency's forecast would be completely invalid.

SSA likely understates the number of additional CDRs it would schedule if this rule were implemented. The NPRM says that Step 5 allowances would be placed in the MIL category and scheduled for CDRs every two years unless the beneficiary has one of 17 impairments and has the appropriate age, functional limitations, and (for seven impairments) time outside of the workforce. "Time outside of the workforce" is not defined by the proposed rule, and how it will fit with an unspecified age threshold and functional limitations is also unclear. SSA's 2018 Annual Statistical Report on the SSDI Program (Table 64) shows that 34.4% of Title II disability awards from 1999 to 2017 were at Step 5. The 2018 SSI Annual Statistical Report (Table 73) shows that from 1992 to 2017, 30.8% of SSI awards were at Step 5 (including adults for whom medical-vocational factors were considered and children found to have functionally equaled a listing). Of the awardees who continue to receive disability benefits, the vast majority would be placed in the MIL category and scheduled for CDRs every two years. Given this potentially enormous increase in the number of beneficiaries placed in the MIL category, SSA may have severely underestimated the

[3] Hemmeter J, Stegman M (2013) Subsequent program participation of former social security disability insurance beneficiaries and supplemental security income recipients whose eligibility ceased because of medical improvement. Social Security Bulletin 73(2):1–38.

number of CDRs it will need to perform each year in order to stay current. The agency will likely experience higher than estimated administrative costs to perform these CDRs or very large CDR backlogs.

Potentially more concerning is the fact that SSA does not know whether many of its claims were granted at Step 3 or Step 5, and there is no mention in the NPRM of how such cases will be handled. In the aforementioned tables in SSA's annual statistical reports, there is a category labeled "other" for cases where the agency has no records of the step in the sequential evaluation process at which benefits were granted. In the past four years, more than 70% of disabled widow/er and disabled adult child awards have been coded as "other." But the problem is much longer-standing, and much wider-spread, than that. Between 1999 and 2017, SSA made more than 5.8 million Title II disability awards that are coded as "other." Between 1992 and 2017, the agency made more than 6.6 million such SSI awards. The NPRM does not explain how SSA will determine the appropriate CDR category for the millions of such cases where benefits continue to be paid. Having been deprived of the ability to provide meaningful comment on this issue, all we can say is that it could cause substantial deviation from SSA's estimates of the number of people placed in each CDR category, the resulting administrative costs, and the burdens placed on people with disabilities.

2) Costs to the Public

The estimated costs to the public estimated by SSA are focused on the costs to beneficiaries of completed both the full medical CDR form and the mailer CDR form. They estimate that the former will take 60 minutes and the latter only 15 minutes.

As discussed above, the full medical CDR form is burdensome in and of itself and requires substantial work by the beneficiary or a representative of the beneficiary. SSA’s estimate that it would require only 60 minutes of work is completely unrealistic. Detailed medical records or assistance from health care professionals is almost certainly required to ensure accurate responses and, in states where medical records are not available for CDRs, beneficiaries will be required to expend their own limited funds to purchase these records. In addition, by definition, people with disabilities who are eligible for OASDI or SSI benefits have disabilities that interfere with their ability to work and many will require addition assistance to complete these forms, from a family member or a service provider. Children with disabilities will also, by definition, not be able to complete this form on their own and will require assistance.

The mailer review, while shorter, still requires information that a person with disability may need to collect before answering the form. This includes recent medical treatment and any work, requiring specific and detailed information about earnings. SSA’s estimate of 15 minutes to complete this form also seems to be a dramatic undercount.

In addition, this estimate does not take into account the rates of appeal or the costs to people with disabilities to appeal the initial cessation decision. Given the high error rates, discussed above, and the number of decisions overturned on appeal or at reconsideration, with additional cases overturned after ALJ hearings, Appeals Council review, or federal court appeals, individuals are likely to appeal, leading to additional costs.

3) Costs to SSA

SSA estimates that the changes will result in $1.8 billion in program integrity costs to the Agency. We believe, given lack of clarity about how this rule will be implemented and the existing issues with the CDR process discussed above, that this estimate is low. The additional costs for non program integrity workloads would be significant and are not discussed at all in the NPRM, which is a fatal flaw for the proposed rule.

Given the inaccuracies of each of these cost analyses, SSA has failed to adequately assess the costs of this proposed rule in violation of the Administrative Procedure Act.

Conclusion

CDRs are burdensome and can be harmful to beneficiaries. While we acknowledge that SSA's responsibility for program integrity, SSA should only propose changes to the CDR process if the changes are supported by facts and evidence, provided in a way to allow meaningful notice and comment. SSA has failed to do that here. As a result, the agency should rescind this proposal. Any future proposed changes should comply with the Social Security Act and the Administrative Procedure Act, and should improve outcomes for people with disabilities.

The current proposed rule does not meet this standard.

Thank you for the opportunity to comment on these proposed regulations.

Respectfully submitted,

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