[Letterhead]

January ?, 2020

Commissioner Andrew Saul

Social Security Administration

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, Docket No. SSA-2018-0026, RIN 0960-AI27

Dear Commission Saul:

[summary re: your organization]

[thanks for opportunity to comment]

**The Burden of CDRs on [your population]**

*[The goal in this section is to establish that CDRs are a burden on people with disabilities or other chronic conditions and should not be expanded without substantial evidence. SSA has two different forms and will require people to fill out one or the other based on an algorithm. The full medical review (FMR) form is much longer, but both that and the “mailer” form require a lot of information. We recommend commenting on how hard these forms would be for many people with disabilities to complete.*

*You can see the full medical form here:* [*https://www.reginfo.gov/public/do/DownloadDocument?objectID=68033401*](https://www.reginfo.gov/public/do/DownloadDocument?objectID=68033401)

*You can see the mailer form here:*

[*https://www.reginfo.gov/public/do/DownloadDocument?objectID=44961601*](https://www.reginfo.gov/public/do/DownloadDocument?objectID=44961601)

*Points to make:*

* *The need for health care professionals to be involved and the burden that places on both the individual and the professionals.*
* *The cost of medical records for individuals (in some states, health care providers are required to provide medical records at no cost for the initial social security application, but not for CDRs)*
* *The need in the Mailer to have comprehensive and clear employment data, which may place a burden on employers to help complete the form.*
* *The complex nature of the form and the need for assistance completing it for people with some disabilities due to their disabilities* 
  + *This rule will harm to people with disabilities by forcing people with disabilities, their families, employers, and service providers to spend more of their time on paperwork*
  + *You may want to mention that in 2015, the last year for which we have data, 34% of initial cessations were reversed on appeal and SSA makes a lot of mistakes in CDRs]*

*Extra: You can also talk about other challenges that your population faces in accessing health care that would make reporting on medical conditions difficult or challenges they may have responding to documents that are not in plain language without assistance.]*

**The Proposed Rule [lacks evidence/is impermissibly vague or will harm people with disabilities]**

*[SSA has proposed three buckets of changes: creating a new review category, revising criteria by which a review category is assigned, and revising the frequency of review changes for each category. It can be helpful to organize your comments to respond to each of these things, focusing on your concerns or confusion about SSA’s proposal.]*

1. Expanding the Medical Diary Categories From Three to Four

*[SSA argues that a new category is required to more accurately capture beneficiaries when they improve. They cite to internal analysis and provide two documents (cited at fn 36 and 38) to justify this change.*

*Points to make:*

* + *The analysis provided doesn’t include numbers of beneficiaries, so it is incomplete*
  + *The analysis doesn’t include the same conditions from one document to the other, so it is impossible to compare*
  + *The analysis is based on a year of data (fn 38) and three years of data (fn 36), which does not allow trends to be seen or show that this is a big enough problem to justify such a major change*

*Extra: SSA also briefly discusses a few other factors suggesting a new category would be helpful which are not supported by the evidence. If you would like to comment in response to these, we would suggest reviewing the comments of NOSSCR or CCD which do so in detail.]*

1. Revising the Criteria To Assign Each Case to Each Diary Category

*[SSA details how they plan to assign people to different review category. We would suggest commenting on their proposals for the new Medical Improvement Likely (MIL) category, since that is where the major change is.*

*Points to make:*

* + *There is no evidence cited for either the inclusion of beneficiaries approved at Step 5 or children at age 6 and 12 in MIL. While SSA says this is based on medical evidence, none is cited.*
    - *It is extremely concerning re: Step 5 because SSA does not know whether many of its claims were granted at Step 3 or Step 5 and so won’t know how many people they are adding to the criteria (see CCD comments for more context)*
    - *For children, the proposal suggests reviewing all children at age 6 and age 12, does not say that it will take into account when the child was most recently reviewed, which could result in repeated reviews.*
  + *If your organization focuses on the 10 impairments where age + functional limitation or the 7 where age + function + time outside of the workforce is a factor, you may want to point out that SSA doesn't give an age threshold, define time outside of the workforce, explain how the factors will work with the other factors, or give evidence that younger people with the impairment are more likely to improve than older ones.*
  + *It is unclear how people with multiple impairments will be categorized, despite a majority of people approved*
  + *If you represent a particular group being added to MIL, we would recommend detailing how hard it is to access the right services for your population, how long it takes for people to recover, and any other relevant medical evidence]*

1. The Frequency of a CDR for Each of the Four Medical Diary Categories

*[SSA is proposing to increase the frequency of reviews for beneficiaries in the Medical Improvement Not Expected from 7 years to every 6 years. In addition, this is a good place to comment on concerns you have about increasing the number of reviews for people given other issues with the CDR process.*

*Points to make:*

* + *There is no evidence that increasing the frequency of MINE reviews makes any sense—by definition these individuals are not going to medically improve. If your population is generally a MINE population, it might be worth discussing the functional limitations they have.*
  + *CDRs are currently conducted on a schedule that SSA has trouble keeping up with—and many people are waiting for initial hearings to access benefits. Is this really a good use of SSA’s time?*
  + *The current CDR schedule resulted in 2015 (the last year for which we have data) with a $1 to $19 ratio of cost to SSA to program savings. The proposed rule has a $1 to $1.40 ratio. This is not a good use of agency resources.]*

**The Proposed Rule Fails to Estimate Costs and Burdens on the Public**

*[SSA estimates that there will be an additional 2.6 million CDRs if this proposal is finalized, costing the SSA $1.8 billion and resulting in benefit reductions amounting to $2.6 billion. However, there is no estimate of the number of individuals who will lose benefits. We would recommend commenting that this analysis is lacking.*

*Points to make:*

* + *No rule should be enacted without a clear estimate of how many people will lose benefits because that estimate allows the public to understand the breadth of the change and the impact it will have on individual lives.*
  + *It is unclear if SSA has the estimate and failed to include it (since it seems necessary to estimate reductions in benefits) or if they did not run this estimate. If they did not, then they must withdraw this rule and immediately do so*
  + *Original CDR decisions are often overturned at reconsideration and on appeal and SSA has not taken these incorrect decisions into account in their estimates*
  + *SSA is estimating that the FMR form will only take an hour to complete and the Mailer will only take 15 minutes. These estimates are completely unrealistic]*

**Conclusion**

We [found it very difficult to/could not comment effectively on] the proposed rule because of the lack of evidence provided, but on the basis of the limited evidence we were provided, we oppose these changes and urge SSA to withdraw the rule.

Sincerely,