



Lutheran  
Services  
in America

January 27, 2020

Commissioner Andrew Saul  
Social Security Administration  
6401 Security Boulevard  
Baltimore, MD 21235-6401

Submitted via [www.regulations.gov](http://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 Commissioner Saul:

As President and CEO of Lutheran Services in America, I write to offer comments on the Social Security Administration's (SSA) Proposed Rules Regarding the Frequency and Notice of Continuing Disability Reviews RIN-0960-AI27. We oppose the suggested changes and urge the SSA to withdraw the rule.

Lutheran Services in America leads one of the largest health and human services networks in the U.S., made up of over 300 Lutheran social ministry organizations that operate with over \$22 billion in annual revenue. Efforts of the dedicated people who make up our national network help improve the lives of 1 in 50 Americans each year. Guided by God's call to love and serve our neighbors, we empower our faith-based member organizations in their mission to lift up the nation's most vulnerable people. In providing services to seniors, children and people with disabilities, along with veterans, refugees and the homeless, our members work in 1,400 communities throughout the country—in rural and urban areas—as shown on this map: [http://bit.ly/LSA\\_member\\_map](http://bit.ly/LSA_member_map). A vital part of our organization is the Lutheran Services in America-Disability Network, a nationwide network of Lutheran social ministry organizations, faith-



based organizations and Lutheran professionals providing support to individuals with intellectual and developmental disabilities and related conditions. LSA-DN includes 19 member organizations that provide support to individuals throughout the United States.

We understand that Section 22 (i) of the Social Security Act mandates that the SSA 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; however, we have significant concerns about the SSA's proposal to perform more CDRs, more frequently.

**CDRs are a costly and burdensome process for beneficiaries.**

From any perspective, the CDR process is lengthy and cumbersome. The full medical CDR determination form is 15 pages long, includes multiple essays, and requires several stamps to return to the SSA via mail. Beneficiaries must report all medications and medical treatments they receive, any medical providers they see, and include information on all their activities of daily living. For people with disabilities, who often see multiple specialists and have extensive medical interventions, the amount of information they must collect to complete this form is significant.

Everyone who receives a CDR has been found disabled by the SSA, meaning they have one or more severe and medically determinable impairments that will last at least one year or be fatal. This includes people with intellectual, developmental or mental health disabilities that may specifically impact their ability to understand and complete paperwork. Many of these individuals will require additional assistance from providers or family members to complete paperwork.

For children undergoing a CDR, there will be a significant burden on family members and providers who are required to fill out this lengthy paperwork. In addition, disability beneficiaries are often older, have less education, less stable

housing, and lower incomes than the general population, which creates additional challenges when it comes to completing the CDR.

CDRs can also be costly to beneficiaries who may need to make additional appointments to obtain medical records and visit medical professionals for updated assessments and testing. Beneficiaries may also need to hire a representative to assist with the CDR process, or to navigate multiple levels of appeals.

**The proposed regulation lacks clear evidentiary support and would harm people with disabilities.**

The proposed rule suggests three types of changes: 1) expanding medical diary criteria from three to four categories; 2) revising the criteria used to assign the types of cases in each diary category; and 3) adjusting the frequency of reviews for certain diary categories. We are concerned that the agency has failed to provide adequate evidence to justify these changes and address our concerns with each below.

*1) Expanding the Medical Diary Criteria From Three to Four*

Currently, there are three diary criteria that the SSA uses to categorize cases: a) Medical Improvement Expected (MIE), b) Medical Improvement Possible (MIP) and c) Medical Improvement Not Expected (MINE). The proposed rule suggests the addition of a fourth diary criteria Medical Improvement Likely (MIL). The SSA claims that adding this fourth category will help to more accurately capture when a condition shows medical improvement (MI). The SSA bases this assertion on its own “experience over time administering CDRs in the existing three categories.” Yet the supplementary documents provided in this rule simply do not contain adequate evidence to support this change.

The supplementary documentary evidence provided, entitled “Cessation Rates by Impairment” (cited at footnote (fn) 36 of the NPRM), includes only the average

of three years of data, from 2014 to 2016, and lists only 15 impairments. The current CDR process has been in place since 1986, so it is unclear why the SSA would choose not to provide more historical evidence that would give more accurate trends on improvement rates over time. In addition, it is impossible to comment on the accuracy of these data, given that the document provided fails to indicate the exact number of individuals that make up the pool from which each percentage was derived.

The supplementary document entitled “Cessation Rates by Diary Category” (cited at fn 38 of the NPRM) is based on only 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 full medical reviews (FMR), 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.

We are also concerned that the SSA’s assertion that a two-year Medical Improvement Likely diary category “will allow [the SSA] to assess MI after some beneficiaries benefit from access to health care through Medicare or Medicaid” is inaccurate. It is true that individuals eligible for SSI will be able to access Medicaid, however individuals eligible for SSDI face a five month wait for SSDI benefits and a 24 month waiting period for Medicare. In states without Medicaid expansion, individuals will face limited health care options, and the SSA seems to have failed to account for the fact that Medicaid varies from state to state and not all states provide the most advanced treatment options.

## *2) Revising the Criteria Used to Assign Cases to Each Diary Category*

Similarly, we are concerned that the SSA does not provide any data, clear studies, or evidence to support revising the criteria used to assign cases to each diary category. In particular, we are concerned with the development of the new MIL category. The proposed rule fails to explain how some conditions were selected for this category and the rationale seems arbitrary. For example, anxiety

disorders and leukemias both are proposed to be scheduled in the MIL category. Yet the document “Cessation Rates by Diary Category” (cited at fn 38 of the NPRM) lists the former’s cessation rate as 24.2% and the latter’s as 63.7%. The former has a higher cessation rate for people currently placed in the medical improvement expected (MIE) diary category and the latter has a higher cessation rate for those placed in the medical improvement possible (MIP) diary category. In addition, given that only one year’s worth of data is provided here, and that these data are now more than three years old, it is nearly impossible to determine whether the data presented remain statistically significant.

The proposed rule also does not provide any data 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 of the sequential review. Given this, there is no evidence to support assigning cases awarded at Step 5 of the sequential evaluation process to the MIL diary category.

The proposed rule also fails to explain the justification for requiring CDRs for children at age 6 and age 12, and it does not explain how the SSA would handle situations where the disability determination occurred close to the child’s sixth or twelfth birthday. The proposed rule purports that the change is being made because these are ages when children are “approaching a chronological age with key developmental activities.” However, there is no evidence given to support this assertion. In addition, logic might indicate that these ages are times when children are undergoing major life changes and conditions may become unstable. The challenges associated with six year olds starting school, for example, might exacerbate their conditions. 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 proposed rule fails to explain what CDR category would be used for common conditions such as diabetes, essential hypertension, personality disorders, osteoarthritis and allied disorders, chronic pulmonary insufficiency, chronic ischemic heart disease, or other conditions that are among the top 20 most common among disability claimants. It fails to give any indication how frequently such conditions would be reviewed.

### *3) The Frequency of Reviews in Each Diary Category*

We are particularly concerned about the SSA's proposal to revise the timeframe for cases in the MINE diary category from no less frequently than once every 7 years but no more frequently than once every 5 years, to at least once every 6 years. The 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, the SSA has "not used a shorter review period for permanent impairments." We believe this indicates that the SSA has consistently utilized a 7-year review cycle for the past 34 years. The evidentiary basis for this change is unclear. While such a change may not seem particularly significant, 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. We are extremely concerned about the prospect of subjecting individuals to increased CDRs with no evidentiary basis.

In addition, we have multiple concerns about the increased frequency of CDRs that are not addressed by the proposed rule. Most importantly, CDRs are often decided incorrectly. Even when disability beneficiaries are found to have medically improved, this determination is often overturned on appeal. According to the 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 administrative law judge (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 also are overturned by the

Appeals Council and in federal court. Increasing the number of CDRs is going to add an increased burden to an already strained agency and is unlikely to improve the accuracy of determinations.

The 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 the SSA already has serious challenges performing CDRs, including adhering to its current schedule of performing them. We are concerned that the proposed rule would increase backlogs and difficulties at every stage of the CDR process. The 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.

**The proposed rule fails to appropriately estimate costs and burdens to the public.**

We are concerned that the proposed rule fails to estimate the costs and burdens of these changes on the public. First, we would like to note that the proposed rule fails to estimate the number of people it anticipates would lose benefits as a result of the proposed rule. Presumably, the agency has developed such an estimate in order to project decreases in benefit payments, however that calculation has not been detailed in the proposed rule. If the SSA estimated costs without determining how many people would lose benefits, the agency's forecast would be completely invalid.

The SSA's analysis also estimates that the full medical CDR form should take beneficiaries an average of 60 minutes to complete, while the shorter mailer CDR form should take approximately 15 minutes. As we noted before, completing the full medical CDR form is burdensome and requires substantial work by the beneficiary or a representative of the beneficiary. It generally requires significant medical documentation in order to complete accurately. While shorter, the mailer CDR still requires substantial information about recent



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medical treatment and any work, requiring specific and detailed information about earnings. Given this, we find the SSA's estimates to be highly inaccurate. 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.

Finally, the 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. Given the problems we've noted above, we believe that the SSA has failed to adequately estimate the costs of the proposed change.

We would like to thank you for the opportunity to review the proposed rule. We acknowledge the SSA's significant responsibility in ensuring program integrity. However, we also recognize that CDRs are a cumbersome and costly process for beneficiaries. Given this, the SSA should only propose changes to the current system if they are supported by strong evidence and data that justify meaningful change. The SSA has failed to provide adequate data to allow for meaningful notice and comment on the current proposed rule. As such, we strongly recommend that the proposed rule be rescinded. Thank you for your time and attention.

Respectfully,

Charlotte Haberaecker  
President and CEO