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Donald L. Riggins,

*Acting Manager, Transport Airplane
Directorate, Aircraft Certification Service.*

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-AWP-26]

Establishment of Class E Airspace; Big Bear City, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes an Class E airspace area at Big Bear City, CA. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 26 at Big Bear City Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the GPS RWY 26 SIAP to Big Bear City Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Big Bear City Airport, Big Bear City, CA.

EFFECTIVE DATE: 0901 UTC April 20, 2000.

FOR FURTHER INFORMATION CONTACT:

Larry Tonish, Airspace Specialist, Airspace Branch, AWP-520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725-6539.

SUPPLEMENTARY INFORMATION:

History

On December 29, 1999, the FAA proposed to amend 14 CFR part 71 by establishing a Class E airspace area at Big Bear City, CA (64 FR 72969). Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the GPS RWY 26 SIAP at Big Bear City Airport. This action will provide adequate controlled airspace for aircraft executing the GPS RWY 26 SIAP at Big Bear City Airport, Big Bear City, CA.

Interested parties were invited to participate in this rulemaking

proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations for airspace extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes a Class E airspace area at Big Bear City, CA. The development of a GPS RWY 26 SIAP has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the GPS RWY 26 SIAP at Big Bear City Airport, Big Bear City, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS.

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace

Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Big Bear City, CA [New]

Big Bear City, CA

(Lat. 34°15'49" N, long. 116°51'16" W)

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Big Bear City Airport.

* * * * *

Dated: Issued in Los Angeles, California, on February 23, 2000.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 00-5490 Filed 3-6-00; 8:45 am]

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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960-AE56

Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Evaluating Opinion Evidence

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are revising the Social Security and Supplemental Security Income (SSI) regulations concerning the evaluation of medical opinions to clarify how administrative law judges and the Appeals Council are to consider opinion evidence from State agency medical and psychological consultants, other program physicians and psychologists, and medical experts we consult in claims for disability benefits under titles II and XVI of the Social Security Act (the Act). We are also defining and clarifying several terms used in our regulations and deleting other terms.

EFFECTIVE DATE: These rules are effective April 6, 2000.

FOR FURTHER INFORMATION CONTACT:

Georgia E. Myers, Acting Regulations Officer, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, 1-410-965-3632, or TTY 1-800-966-5609. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213, or TTY 1-800-325-0778.

SUPPLEMENTARY INFORMATION: The Act provides, in title II, for the payment of

disability benefits to persons insured under the Act. Title II also provides, under certain circumstances, for the payment of child's insurance benefits based on disability and widow's and widower's insurance benefits for disabled widows, widowers, and surviving divorced spouses of insured persons. In addition, the Act provides, in title XVI, for SSI payments to persons who are aged, blind, or disabled and who have limited income and resources.

For adults under both the title II and title XVI programs (including persons claiming child's insurance benefits based on disability under title II), "disability" means the inability to engage in any substantial gainful activity. For an individual under age 18 claiming SSI benefits based on disability, "disability" means that an impairment(s) causes "marked and severe functional limitations." (Our regulations explain at § 416.902 that "Marked and severe functional limitations, when used as a phrase, * * * is a level of severity that meets or medically or functionally equals the severity of a listing in the Listing of Impairments in appendix 1 of subpart P of part 404 * * *.") Under both title II and title XVI, disability must be the result of a medically determinable physical or mental impairment(s) that can be expected to result in death or that has lasted or can be expected to last for a continuous period of at least 12 months.

Explanation of Revisions

Simplification and Clarification of Terms

These final regulations define and clarify several terms that have been used in our regulations, and delete other terms. Our prior regulations used several terms to refer to sources of medical evidence. Regulations §§ 404.1502 and 416.902, "General definitions and terms for this subpart," defined the terms "source of record," "medical sources" (which included "consultative examiners"), and "treating source." These terms were used in various sections of the regulations in subpart P of part 404 and subpart I of part 416, chiefly §§ 404.1527 and 416.927, "Evaluating medical opinions about your impairment(s) or disability." In addition, §§ 404.1519 and 416.919 used the phrase "a treating physician or psychologist, another source of record, or an independent source." Regulations §§ 404.1527 and 416.927 also employed the terms "nontreating source" and "nonexamining source."

In paragraph (a) of §§ 404.1513 and 416.913 of our regulations, we say that

we need reports about the individual's impairments from "acceptable medical sources" and we identify the sources that are acceptable medical sources. We need various terms for types of acceptable medical sources in only three, specific instances: (1) When we explain the preference we give to obtaining evidence from treating sources; (2) when we explain the preference we give to treating sources to perform consultative examinations; and (3) in our rules for weighing opinions from acceptable medical sources. In the first two cases, the only definition that is needed is the definition of a "treating source." In the last case, relevant distinctions are needed between treating sources, nontreating sources (*i.e.*, acceptable medical sources, such as some consultative examiners, who have examined an individual but not provided treatment), and nonexamining sources (*i.e.*, acceptable medical sources who have provided evidence but who have not treated or examined the individual).

Therefore, while the term "medical source" includes the term "acceptable medical source," we are simplifying and clarifying the specific terms we use to describe various acceptable medical sources of evidence, including medical opinion evidence (*i.e.*, opinions on the nature and severity of an individual's impairment(s)—see §§ 404.1527(a)(2) and 416.927(a)(2)) and other opinions (*e.g.*, opinions on issues reserved to the Commissioner of Social Security (the Commissioner)—see §§ 404.1527(e) and 416.927(e))—by using only four terms: "Treating source," "nontreating source," "nonexamining source," and an overall term, "acceptable medical source," which includes all three types of sources. These clarifications do not change our current policy, but are only intended to clarify our intent.

To do this, we now define the term "acceptable medical source" in §§ 404.1502 and 416.902. This is a term we have used for many years in §§ 404.1513(a) and 416.913(a). We are also redefining the term "medical sources" to mean acceptable medical sources or other health care providers who are not "acceptable medical sources," to clarify our intent in certain regulations sections. For instance, under the rules in §§ 404.1519, 404.1519g, 416.919, and 416.919g, we may select a qualified medical source who is not an "acceptable medical source" to perform a consultative examination; *e.g.*, an audiologist. We are deleting speech and language pathologist from this example, which appeared in the Notice of Proposed Rulemaking (NPRM), published in the **Federal Register** on

September 25, 1997 (62 FR 50271), because an NPRM published October 9, 1998 (63 FR 54417) proposes to add qualified speech and language pathologists as acceptable medical sources.

In addition, a distinction between "medical source" and "acceptable medical source" is necessary because "an acceptable medical source" is required to establish the existence of a medically determinable impairment. See §§ 404.1513(a) and 416.913(a). Also, only an "acceptable medical source" can be considered to be a "treating source" for purposes of giving controlling weight to treating source medical opinion. See § 404.1527(d)(2) and 416.927(d)(2). The distinction between "acceptable medical source" and "medical source" is simply to facilitate application of the two longstanding rules noted above and is in no way intended to imply anything derogatory about medical sources that are not "acceptable medical sources."

We are also adding definitions for the terms "nonexamining source" and "nontreating source," which have been used in §§ 404.1527 and 416.927, but which previously were not defined in our regulations. We are clarifying the definition of "treating source" to include the other acceptable medical sources identified in §§ 404.1513(a) and 416.913(a) in addition to licensed physicians and licensed or certified psychologists, and, consistent with the use of the word "evaluation" in the first sentence of the definition in §§ 404.1502 and 416.902, to clarify that a source who only examines and evaluates an individual on an ongoing basis, but who does not provide any treatment, may also be a "treating source."

We are deleting the term "source of record" because sources previously included in the definition of that term are now included in the definition of the terms "acceptable medical source" or "medical sources," and the term "source of record" is not needed.

Clarification of §§ 404.1527 and 416.927

Consistent with our original intent, we are clarifying paragraph (f) of §§ 404.1527 and 416.927. As we explained in the preamble to the rules published in the **Federal Register** on August 1, 1991 (56 FR 36932, 36937), the purpose of paragraph (f) is to: (1) Explain how we consider evidence from various kinds of nonexamining sources (*e.g.*, State agency medical and psychological consultants, other program physicians and psychologists, and medical advisors—now called "medical experts"—at the administrative law judge and Appeals

Council levels of administrative review); (2) clarify the role of the State agency medical and psychological consultant at the various levels of the administrative review process; and (3) codify in regulations our longstanding policy that, because State agency medical and psychological consultants are highly qualified physicians and psychologists who are also experts in Social Security disability evaluation, administrative law judges will consider their findings with regard to the nature and severity of an individual's impairment as opinions of nonexamining physicians and psychologists.

Sections 404.1527(f) and 416.927(f) of the regulations have stated since 1991 that administrative law judges and the Appeals Council are required to consider State agency medical and psychological consultant findings about the existence and severity of an individual's impairment(s), the existence and severity of an individual's symptoms, whether an individual's impairment(s) meets or equals the requirements for any impairment listed in appendix 1 to subpart P of part 404, and an individual's residual functional capacity. We restated and clarified these provisions of the regulations in Social Security Ruling 96-6p, "Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence." (61 FR 34466, July 2, 1996.)

Consistent with our statements in the preamble to the regulations published in 1991 and in Social Security Ruling 96-6p, we are making the following revisions to paragraph (f) of §§ 404.1527 and 416.927. We are also making conforming revisions to paragraphs (d)(6) and (e). None of these revisions changes our current policies.

Because paragraph (f) refers to the rules in paragraphs (a) through (e) of §§ 404.1527 and 416.927, which collectively address both medical opinions (as described in paragraph (a)(2) of §§ 404.1527 and 416.927) and opinions on issues reserved to the Commissioner, it is inaccurate to refer in paragraph (f) solely to opinions on the "nature and severity of a person's impairment(s)." Therefore, we are deleting the phrase "on the nature and severity of your impairments" from the introductory text of paragraph (f). We are also revising paragraph (f)(2) to provide more detail on how administrative law judges are to consider the opinions of State agency

medical and psychological consultants, other program physicians and psychologists, and medical experts we consult. We have divided paragraph (f)(2) into an introductory paragraph and new paragraphs (f)(2)(i) through (f)(2)(iii), which provide a more detailed explanation of how opinions from these sources are to be evaluated. The introductory text of paragraph (f)(2) and, when appropriate, paragraphs (f)(2)(i) through (f)(2)(iii), now include reference to "other program physicians and psychologists" and the term "medical expert" for consistency with the language in paragraph (b)(6) of §§ 404.1512 and 416.912.

We are clarifying in new paragraph (f)(2)(i) of §§ 404.1527 and 416.927 that, because State agency medical and psychological consultants and other program physicians and psychologists are highly qualified physicians and psychologists who are also experts in Social Security disability evaluation, administrative law judges must consider findings of these experts, except for the ultimate determination of disability, when administrative law judges make their decisions. We now state in new paragraph (f)(2)(ii) that when administrative law judges evaluate the findings of these experts, they will use the relevant factors set forth in paragraphs (a) through (e) of §§ 404.1527 and 416.927.

In paragraph (f)(2)(ii) of §§ 404.1527 and 416.927 we are also providing examples of the kinds of factors that an administrative law judge must consider when evaluating the findings of State agency medical and psychological consultants or other program physicians and psychologists. We are also clarifying that administrative law judges are required to explain in their decisions the weight given to any opinion of a State agency medical or psychological consultant or other program physician or psychologist, as they must do for any opinions from treating sources, nontreating sources, and nonexamining sources who do not work for us. We have added language that did not appear in the NPRM (see 62 FR 50272, September 25, 1997) to clarify that when treating source opinion is given controlling weight, it is not necessary for the administrative law judge to provide an explanation of the weight given to the opinion of a State agency medical or psychological consultant. For purposes of clarity, we have also made a revision to the first sentence of paragraph (f)(2)(ii) to refer to administrative law judges in the singular, rather than the plural.

In new paragraph (f)(2)(iii) of §§ 404.1527 and 416.927, we are

substituting the term "medical expert" for "medical advisor" for the reason explained below in the discussion of §§ 404.1512 and 416.912. We are also making it clear in new paragraph (f)(2)(iii) of §§ 404.1527 and 416.927 that, when administrative law judges consider opinions from medical experts they consult, they will use the rules in paragraphs (a) through (e) of §§ 404.1527 and 416.927.

We are also amending paragraph (d)(6) of §§ 404.1527 and 416.927 by adding two examples of other factors that can affect the weight we give to a medical opinion. One example of a relevant factor that we proposed in the proposed rules to add to §§ 404.1527(d)(6) and 416.927(d)(6) was the amount of Social Security disability program expertise an acceptable medical source has. However, as a result of public comments received on this proposed example, we are revising the example to give consideration to the amount of understanding that an acceptable medical source has of our disability programs and their evidentiary requirements, regardless of the source of that understanding, as a relevant factor that is consistent with the examples in final paragraph (f)(2)(ii). This includes acceptable medical sources that are current or former State agency medical or psychological consultants and other program physicians and psychologists. This also includes those acceptable medical sources that have gained their understanding of our disability programs and their evidentiary requirements in other ways (e.g., through continuing medical education or experience in conducting consultative examinations for us).

Another example of a relevant factor that we proposed to add was whether an acceptable medical source reviewed the individual's entire case record. However, based on the public comments received on this proposed example, we are revising the example to provide that the extent to which an acceptable medical source is familiar with the other information in the individual's case record is a relevant factor. Both of these are examples of relevant factors that we will consider in deciding the weight to give to a medical opinion from any acceptable medical source.

We are also amending paragraph (e) of §§ 404.1527 and 416.927 by adding an introductory paragraph to distinguish opinions on issues reserved to the Commissioner from medical opinions, and by designating the last sentence of paragraph (e)(2) as new final paragraph (e)(3) to make it clear that the rule in new final paragraph (e)(3) applies to an

opinion about disability described in paragraph (e)(1) as well as to an opinion on any issue reserved to the Commissioner described in paragraph (e)(2).

Other Changes

Sections 404.1502 and 416.902 General Definitions and Terms for This Subpart

In §§ 404.1502 and 416.902, we are clarifying, consistent with §§ 404.602 and 416.302, the definition of the term “you” to more accurately indicate that the definition includes the person for whom an application is filed, because the person who files an application may be filing it on behalf of another person.

We are deleting reference to the “Secretary” from § 416.902 to reflect § 702(a)(5) of the Social Security Act as amended by § 102 of the Social Security Independence and Program Improvements Act of 1994, Public Law 103–296, enacted on August 15, 1994, which transferred from the Secretary of Health and Human Services to the Commissioner of Social Security the authority to issue regulations. We are revising the language from how it appeared in the NPRM (62 FR 50272, September 25, 1997) to clarify the change in authority from the Secretary of Health and Human Services to the Commissioner.

Sections 404.1512 and 416.912 Evidence of Your Impairment

We are amending §§ 404.1512 and 416.912 by revising paragraph (b)(6) to delete the word “certain” to clarify that every finding made by State agency medical or psychological consultants and other program physicians or psychologists and the opinions of medical experts, other than the ultimate determination of whether an individual is disabled, is evidence that an administrative law judge and the Appeals Council must consider at the administrative law judge and Appeals Council levels of review. We are also changing the term “medical advisor” to “medical expert” because the latter is the term we currently use to describe these nonexamining sources we consult at the administrative law judge and Appeals Council levels.

Sections 404.1513 and 416.913 Medical Evidence of Your Impairment

We are revising paragraph (c) of §§ 404.1513 and 416.913 to codify our policy interpretation that, at the administrative law judge and Appeals Council levels of review, “statements about what you can still do,” which we also call “medical source statements,”

include residual functional capacity assessments made by State agency medical and psychological consultants and other program physicians and psychologists. This is because they become opinion evidence of nonexamining physicians and psychologists at the hearings and appeals levels. (See Social Security Ruling 96–6p, 61 FR 34466, 34468.)

The regulations describe two distinct kinds of assessments of what an individual can do despite the presence of a severe impairment(s). The first is described in §§ 404.1513(b) and (c) as a “statement about what you can still do despite your impairment(s)” made by an individual’s medical source and based on that source’s own medical findings. This “medical source statement” is an opinion submitted by a medical source as part of a medical report. The second category of assessments is the residual functional capacity assessment described in §§ 404.1545, 404.1546, 416.945, and 416.946 which is the adjudicator’s ultimate finding of “what you can still do despite your limitations.” Even though the adjudicator’s residual functional capacity assessment may adopt the opinions in a medical source statement, they are not the same thing. A medical source statement is evidence that is submitted to the Social Security Administration (SSA) by an individual medical source reflecting the source’s opinion based on his or her own knowledge, while a residual functional capacity assessment is the adjudicator’s ultimate finding based on a consideration of this opinion and all the other evidence in the case record about what an individual can do despite his or her impairment(s). (See Social Security Ruling SSR 96–5p).

Because paragraphs (b) and (c) relate to the reports about an individual’s impairment(s) needed from acceptable medical sources described in paragraph (a), we are clarifying paragraphs (b)(6), (c)(1) and (c)(2) of § 404.1513 and paragraphs (b)(6), (c)(1), (c)(2), and (c)(3) of § 416.913 to refer to findings and opinions of the “acceptable medical source,” rather than findings and opinions of the “medical source.” We are also clarifying paragraphs (c)(1) and (c)(2) of § 416.913 by indicating that they pertain only to adults, to make the construction of these paragraphs parallel to that of paragraph (c)(3), which pertains only to children.

Sections 404.1519 and 416.919 The Consultative Examination

For the reasons explained above about the definition of the term “treating source,” we are revising the first

sentence of §§ 404.1519 and 416.919 to substitute the terms “treating source” and “medical source” for the terms “treating physician or psychologist,” “source of record,” and “independent source.”

Sections 404.1519g and 416.919g Who We Will Select To Perform a Consultative Examination

We are revising paragraph (a) of these sections to refer in the last sentence to §§ 404.1513 and 416.913, rather than §§ 404.1513(a) and 416.913(a), for the reasons explained above about the revised definition of “medical source” in §§ 404.1502 and 416.902. For the same reason, we are also changing the phrase “physician or psychologist” in the first sentence of paragraph (c) to “medical source.”

Sections 404.1519h and 416.919h Your Treating Source

We are revising the heading and text of these sections to substitute the term “treating source” for the term “treating physician or psychologist.”

Sections 404.1519i and 416.919i Other Sources for Consultative Examinations

We are revising the heading and text of these sections to substitute the term “medical source” for the term “source” and the term “treating source” for the term “treating physician or psychologist.”

Sections 404.1519j and 416.919j Objections to the Medical Source Designated To Perform the Consultative Examination.

We are revising the heading and text of these sections to use the term “medical source,” rather than the phrase “physician or psychologist,” for the reasons explained above.

Sections 404.1519k and 416.919k Purchase of Medical Examinations, Laboratory Tests, and Other Services.

We are revising the introductory paragraph of these sections to use the term “medical source,” rather than the phrase “licensed physician or psychologist, hospital or clinic” for the reasons explained above.

Sections 404.1519m and 416.919m Diagnostic Tests or Procedures

We are revising the first sentence of these sections to substitute the term “treating source” for the term “treating physician or psychologist.” We are also revising the last sentence to use the term “medical source designated to perform the consultative examination,” rather than the phrase “consultative examining

physician or psychologist,” for the reasons explained above.

*Sections 404.1519n and 416.919n
Informing the Medical Source of
Examination Scheduling, Report
Content, and Signature Requirements*

We are revising the heading, introductory paragraph, and paragraphs (a), (b), (c), and (e) of these sections to use the term “medical source,” rather than the phrase “physician or psychologist,” for the reasons explained above. We are deleting the word “examining” from the previous regulations and NPRM because sources that examine or have examined a claimant are included in the new definition of the term “medical source.” We are also adding a heading to paragraph (a) for consistency with the other paragraphs in this section. In addition, we are revising paragraph (c)(6) to insert language that we originally intended to include in the 1991 regulations “Standard for Consultative Examinations and Existing Medical Evidence”, as explained in our statements in the preamble to those regulations (56 FR 36932, 36934, August 1, 1991), but inadvertently omitted, to ensure that although medical source statements about what an individual can still do despite his or her impairment(s) should ordinarily be requested as part of the consultative examination process, the absence of such a statement in a consultative examination report does not make the report incomplete.

*Sections 404.1519o and 416.919o When
a Properly Signed Consultative
Examination Report Has Not Been
Received*

We are revising paragraphs (a) and (b) of these sections to use the term “medical source,” rather than the phrase “physician or psychologist,” for the reasons explained above.

*Sections 404.1519p and 416.919p
Reviewing Reports of Consultative
Examinations*

We are revising paragraph (b) of these sections to use the term “medical source,” rather than the phrase “physician or psychologist,” for the reasons explained above. We are revising paragraph (c) to correct the grammar in the first sentence by substituting the word “when” for the word “where.” We are also substituting the term “treating source” for the term “treating physician or psychologist.”

*Sections 404.1519s and 416.919s
Authorizing and Monitoring the
Consultative Examination*

We are revising paragraph (e)(2) of these sections to refer to a consultative examination provider’s “practice,” rather than to a “practice of medicine, osteopathy, or psychology,” for the reasons explained above about the definition of “medical source.” For the same reasons, we now use the term “medical sources” in paragraph (f)(6), rather than the phrase “physicians and psychologists.”

*Sections 404.1527 and 416.927
Evaluating Opinion Evidence*

We are changing the heading of §§ 404.1527 and 416.927 from “Evaluating medical opinions about your impairment(s) or disability” to “Evaluating opinion evidence” to more accurately identify the content of these sections. Under §§ 404.1527(a)(2) and 416.927(a)(2), the term “medical opinion” means statements from acceptable medical sources that reflect judgments about the nature and severity of an individual’s impairments, but §§ 404.1527 and 416.927 address other types of opinions too.

We are revising the third sentence of paragraph (d)(2) of §§ 404.1527 and 416.927 to clarify that the “other factors” referenced in paragraph (d)(6) will be considered along with the factors in paragraphs (d)(2)(i) and (ii) and paragraphs (d)(3) through (d)(5) of this section when we do not give a treating source’s medical opinion controlling weight. As indicated by the introductory text to §§ 404.1527(d) and 416.927(d), exclusion of reference to paragraph (d)(6) was an inadvertent omission when the rule was published. (56 FR 36932, August 1, 1991.)

We are changing the heading of paragraph (e) in §§ 404.1527 and 416.927 to reflect that the Commissioner, not the Secretary of Health and Human Services, has the authority on these issues pursuant to section 702(a)(5) of the Act as amended by section 102 of the Social Security Independence and Program Improvements Act of 1994, Public Law 103–296, enacted on August 15, 1994. We are also changing the second sentence of paragraph (e)(2) to substitute the term “medical sources” for the phrase “treating and examining sources” to be consistent with the use of the term “medical sources” in the first sentence of paragraph (e)(2) and to clarify that we consider opinions from all medical sources on the issues described in the second sentence.

We are also shortening the heading of paragraph (f) of §§ 404.1527 and 416.927 to “Opinions of nonexamining sources,” consistent with the definitions in §§ 404.1502 and 416.902. For the same reason, we are substituting the term “nonexamining sources” for “nonexamining physicians and psychologists” in the first sentence of paragraph (f).

Public Comments

We published these regulatory provisions in the **Federal Register** as an NPRM on September 25, 1997 (62 FR 50270), and we provided the public with a 60-day comment period. The comment period closed on November 24, 1997. We received comments in response to this notice from 126 individuals and organizations. The commenters included Government agencies whose interests and responsibilities require them to have some expertise in the evaluation of medical evidence used in making disability determinations under titles II and XVI of the Act. They also included individuals with disabilities, support groups for individuals with disabilities, attorneys and non-attorney representatives, and legal services organizations that represent the interests of individuals with disabilities. In addition, we received comments from one medical association, physicians, and other medical professionals.

Because many of the comments were detailed, we condensed, summarized, or paraphrased them. We have tried to summarize the commenters’ views accurately and to respond to all of the significant issues raised by the commenters that are within the scope of these rules.

Comment: One commenter recommended that the deadline for submission of comments on the proposed rules be extended, noting that the evaluation of opinion evidence is central to the determination of disability, and that the length and complexity of the proposed rules made comments on the proposed changes extremely difficult.

Response: The NPRM provided the 60-day period that is generally provided for public comments on a proposed rule. We considered the recommendation to extend this period; however, we decided that this was not necessary in view of the number of comments received within the 60-day period displaying in-depth review and consideration of the proposed rules. Moreover, we did not propose any revisions that would change our policies on the evaluation of opinion evidence, and most of the revisions in the

proposed rules merely improved the consistency of our terminology throughout the regulations.

Comment: Many of the comments concerned the quality of consultative examinations we purchase, including the qualifications of consultative examiners and support staff, their equipment, treatment of claimants, and the time spent in conducting some consultative examinations.

Response: Although these comments were outside the scope of the proposed rules, the quality of the consultative examinations we purchase is important to us, and we will consider the comments as we work with the State agencies to ensure quality examinations. We take very seriously our responsibility to do so, as outlined in §§ 404.1519 ff. and 416.919 ff. However, as we explain above, we are revising the paragraphs in §§ 404.1519 ff. and 416.919 ff. only to substitute the term "medical source" for the phrase "physician or psychologist" and to make minor technical revisions. We are not making substantive changes to the rules stated in §§ 404.1519 ff. and 416.919 ff. concerning the purchase of consultative examinations and the review of consultative examination reports to ensure the quality and appropriateness of the examinations.

Comment: Many commenters questioned our statement in §§ 404.1527(f)(2) and 416.927(f)(2) of the proposed rules that State agency medical and psychological consultants are highly qualified physicians and psychologists who are also experts in Social Security disability evaluation, contending that this was an effort to introduce a new criterion to give more weight to the opinions of the State agency medical and psychological consultants. A number of other commenters observed that the statement of findings by the State agency physicians and psychologists are part of the disability determination at the initial and reconsideration levels of administrative review, and they questioned how findings made at one level by an agency adjudicator become expert opinion evidence at another level on the same case. One commenter also indicated that the use of the findings by an adjudicator at one level of administrative review as expert witness evidence at another level represents a conflict of interest.

Response: The statement in §§ 404.1527(f)(2) and 416.927(f)(2) of the proposed rules was taken from the preamble to the original publication of these rules in 1991. ("Standard for Consultative Examinations and Existing Medical Evidence" (56 FR 36937,

August 1, 1991)). Therefore, it is not a new criterion, only a clarification in the regulations of our original intent. As noted in the 1991 preamble, "* * * State agency medical and psychological consultants are highly qualified physicians and psychologists who are also experts in Social Security disability evaluation. Therefore, it has been our longstanding policy that administrative law judges will consider the findings of State agency medical and psychological consultants with regard to the nature and severity of a claimant's impairment as opinions of nonexamining physicians and psychologists." (56 FR 36937, August 1, 1991). We restated and clarified this policy in Social Security Ruling 96-6p, "Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence." (61 FR 34466, July 2, 1996.) However, and as is discussed in more detail later in this preamble, when an administrative law judge or the Appeals Council considers the opinion of a State agency medical or psychological consultant, the weight that will be given to the opinion will depend on the degree to which the medical or psychological consultant provides a supporting explanation for the opinion.

These revisions do not represent a change in policy. It has been our longstanding policy that findings made by State agency medical and psychological consultants are considered opinion evidence at the hearing and Appeals Council levels. Since 1991, §§ 404.1527(f) and 416.927(f) have required administrative law judges and the Appeals Council to consider those findings of fact about the nature and severity of an individual's impairment(s) as opinion evidence of nonexamining physicians and psychologists. These requirements are based on the medical or psychological consultants' experience as health care professionals who are also experts in the evaluation of the medical issues in disability claims under the Act and recognize that we weigh medical opinions included in case records.

In response to the last commenter, the consideration of findings made by a State agency medical or psychological consultant at the initial or reconsideration level of administrative review as opinion evidence at the hearing level does not represent a conflict of interest. At the hearing level, administrative law judges consider the

issues before them de novo. Therefore, when administrative law judges consider issues of disability, they are not bound by any findings made at the State agency in connection with the initial and reconsidered determinations.

Comment: Many of the commenters expressed a concern that the intent of the proposed rules was to negate or moderate the rules for weighing opinion evidence from treating sources that recognize the special intrinsic value of a treating source's relationship with the individual. In particular, concern was expressed about the revision to §§ 404.1527(d)(6) and 416.927(d)(6) that added two examples of other factors that can affect the weight we give to a medical opinion from an acceptable medical source. The two factors noted were the amount of Social Security disability programs expertise the acceptable medical source has, and whether the acceptable medical source reviewed the individual's entire case record before providing a medical opinion.

Response: It was not and is not our intent to negate or moderate the rules for weighing opinions from treating sources. We continue to provide in §§ 404.1527(d) and 416.927(d) that "Generally we give more weight to opinions from your treating sources, since these sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of your medical impairment(s) and may bring a unique perspective to the medical evidence that cannot be obtained from the objective medical findings alone or from reports of individual examinations, such as consultative examinations or brief hospitalizations." We also continue to provide that we will give treating source medical opinions on the nature and severity of an impairment "controlling weight" if we find that the opinion is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record. As we explain above, the two examples being added to paragraph (d)(6) of §§ 404.1527 and 416.927 are simply examples of factors that can affect the weight we give a medical opinion. We believe that they are valid considerations along with all of the other factors (including treatment relationship) we consider when we weigh medical opinions. In response to public comments, however, we are revising the two examples that appeared in the NPRM. We are revising the first example to give consideration to the amount of understanding that an acceptable medical source has of our

disability programs and their evidentiary requirements, regardless of the source of that understanding. We are revising the second example to provide that the extent to which an acceptable medical source is familiar with the other information in the individual's case record is a relevant factor that we will consider.

Comment: Many commenters questioned why we proposed to add a rule to §§ 404.1527(d) and 416.927(d) to consider the amount of Social Security disability programs expertise an acceptable medical source has. They expressed the opinion that, with few exceptions, State agency medical and psychological consultants will be the only medical sources with experience working with the disability program. Another commenter argued that medical experts should be treated as experts because of their knowledge of medicine, not their knowledge of the law. One commenter asked what "disability program expertise" is and how it would be measured. Another commenter stated that a medical source's expertise on the subject of a particular individual's impairments or limitations should be evaluated based on his or her knowledge of the individual and the type of medical impairment experienced by the individual, not by his or her knowledge of the Social Security law and regulations.

Response: As we indicated in the preamble to the proposed rules on September 25, 1997 (62 FR 50272), we proposed to list an acceptable medical source's "Social Security disability programs expertise" as an example of the "other factors" referenced in §§ 404.1527(d)(6) and 416.927(d)(6) that we will consider in weighing an acceptable medical source's medical opinion. As indicated in the preamble, exclusion of the reference to paragraph (d)(6) was an inadvertent omission when the rules on consideration of medical evidence were published in 1991. However, we did not intend that an employment or contractual relationship with SSA or a State agency as a medical or psychological consultant would be the sole means to obtain "Social Security disability programs expertise." We agree that there will be acceptable medical sources that have never been in such a relationship with SSA who will have developed expertise in Social Security disability programs. For example, some medical sources will have obtained such expertise through continuing medical education, or as a result of conducting consultative examinations for us. (See §§ 404.1519n and 416.919n, which state that the "medical sources who perform

consultative examinations will have a good understanding of our disability programs and their evidentiary requirements.") Therefore, we are revising §§ 404.1527(d)(6) and 416.927(d)(6) further to delete "Social Security disability programs expertise" as an example of the "other factors" reference in §§ 404.1527(d)(6) and 416.927(d)(6), and to add the amount an acceptable medical source's "understanding of our disability programs and their evidentiary requirements" as an example of one of the factors we will consider in weighing the acceptable medical source's medical opinion, regardless of the source of that understanding.

Comment: A number of commenters expressed a concern that nonexamining State agency medical and psychological consultants may not have an understanding of "emerging illnesses," such as Chronic Fatigue Syndrome, fibromyalgia, multiple chemical sensitivities, or lupus erythematosus. Several of these commenters indicated, as well, that many regular treating sources do not have the understanding of these illnesses that private researchers and specialists do, and that more weight should be given to the opinions of those specialists who are treating an individual for these illnesses.

Response: We believe that the regulations take this concern into account. The regulations provide for a variety of factors to be applied in evaluating medical opinions, depending on the facts of the individual case. For example, §§ 404.1527(d)(5) and 416.927(d)(5) state that "We generally give more weight to the opinion of a specialist about medical issues related to his or her area of specialty than to the opinion of a source who is not a specialist." Therefore, when we do not give the treating source's opinion controlling weight (for example if a specialist submits evidence that is inconsistent with the treating source's opinion), we can give more weight in an appropriate case to the opinion of a specialist on the individual's particular medical impairment. As we have already noted, the weight to which a medical or psychological consultant's opinion will be entitled depends on these same factors.

Comment: One commenter noted that giving weight to Social Security program expertise and review of the entire case file and requiring administrative law judges to explain in the decision the weight given to the opinions of a State agency medical or psychological consultant reinforces the basic tenets of Process Unification.

Another commenter elaborated on this point, noting that the revision to §§ 404.1527 and 416.927 clarifying our longstanding policy that administrative law judges must consider State agency medical and psychological consultant findings as opinion evidence is an important step in Social Security's efforts to unify the disability process and to restore the program's credibility with the public. The commenter noted that two different processes are perceived now, the initial/reconsideration process in the State agency and the administrative law judge hearing.

Response: As the commenters have observed, these revisions are part of our current Process Unification initiative, which is intended to achieve similar and correct results on similar cases at all stages of the administrative review process for claims for disability benefits under the Act, by ensuring that decisionmakers at each stage are following consistent policies in deciding these claims. This is expected to result in the allowance of claims that should be allowed at the earliest possible level of administrative review, potentially providing favorable decisions at an earlier point for disabled claimants, as well as reducing both the rate of appeal and the rate of allowance on appeal for these claims.

Comment: A number of commenters believed that expertise in Social Security's rules is not something that can be presumed; the expertise of the individual nonexamining doctor would need to be proven in every case in which this factor is an issue. These comments noted that, at the very least, claimants and their representatives must be provided with documentation of the qualifications, training, and expertise of the State agency medical sources.

Response: The Act and regulations recognize State agency medical and psychological consultants as experts in Social Security disability programs. The rules in §§ 404.1527(f) and 416.927(f) require administrative law judges and the Appeals Council to consider the State agency consultants' findings of fact about the nature and severity of an individual's impairment(s) as opinions of nonexamining physicians and psychologists. When an administrative law judge admits a medical opinion into the case record as an exhibit for consideration, including a medical opinion from a State agency medical or psychological consultant that was considered a finding at any earlier level in the administrative review process, the administrative law judge will also admit into the record a statement of the medical source's professional

qualifications as required by our operating instructions.

Comment: A number of commenters questioned why we proposed to add an example to §§ 404.1527(d) and 416.927(d) indicating that whether an acceptable medical source reviewed the entire case before providing a medical opinion is a relevant factor to be considered in evaluating the source's medical opinion. They also questioned whether medical sources other than State agency medical and psychological consultants will have an opportunity to review the individual's entire case record before they provide a medical opinion.

One State agency commenter fully supported the value of a complete file review when assigning weight to medical opinions, noting that medical opinions are too often given adjudicative weight that may be countered by objective evidence or other expert opinion evidence elsewhere in the file.

Response: As with the example of an acceptable medical source's "understanding of our disability programs and their evidentiary requirements," we are revising this proposed example and listing whether the acceptable medical source is familiar with the other information in the individual's case record as another example of the "other factors" referenced in §§ 404.1527(d)(6) and 416.927(d)(6) that we will consider in weighing an acceptable medical source's medical opinion. We believe that it is appropriate for the adjudicator to consider whether an acceptable medical source is familiar with the other information in the individual's case record because this is a relevant factor that can properly affect the weight we give to a medical opinion. An individual and his or her representative have a right to review and obtain copies of the materials in the individual's case record, e.g., for review by the individual's treating or other medical source, if this should be desired.

Comment: One commenter noted that it is the practice for administrative law judges to require "fresh" evidence, and thus current evidence will be submitted just weeks prior to the hearing. The commenter noted that whatever evidence was available to the State agency medical or psychological consultant would not be current and that the administrative law judge would consider the additional evidence.

Response: We agree that the record before the administrative law judge will often include additional evidence beyond what the State agency medical or psychological consultant considered

in his or her medical opinion. As the example in paragraph (d)(6) of §§ 404.1527 and 416.927 indicates, concerning whether an acceptable medical source is familiar with the other information in the individual's case record, this factor will be considered when the administrative law judge or Appeals Council weighs medical opinions from a State agency medical or psychological consultant or other acceptable medical source. This may limit the weight that can be given to a medical opinion from a State agency medical or psychological consultant and the period to which the opinion applies.

Comment: A number of commenters indicated their concern with the manner in which a State agency medical or psychological consultant's medical opinion may be provided in the record. Some of the commenters noted that these opinions frequently are expressed as boxes checked on a form, with little or no rationale, or as a statement of medical findings from records in the file with no other explanation for why the residual functional capacity assessment provided would flow from these findings, or why these opinions from State agency medical or psychological consultants are in conflict with the opinions of treating or examining physicians. They noted that there is no reasonable basis for giving further weight to such a cursory report lacking a substantive rationale.

Response: The revisions we are making do not represent a change in our longstanding policy that the adjudicator should give little weight to an opinion from any source, including a State agency medical or psychological consultant, that is poorly explained and not supported by the evidence in the record. Sections 404.1527(d)(3) and 416.927(d)(3) have stated and continue to state: "The better an explanation a source provides for an opinion, the more weight we will give that opinion. Furthermore, because nonexamining sources have no examining or treating relationship with you, the weight we give their opinions will depend on the degree to which they provide supporting explanations for their opinions." We will evaluate the degree to which these opinions consider all of the pertinent evidence in your claim, including opinions of treating and other medical sources.

Comment: A number of commenters believed that the claimant has a right to cross-examine the State agency medical or psychological consultant when his or her opinions become evidence to be considered by an administrative law judge. Some of the commenters noted that administrative law judges have

been reluctant to issue subpoenas for State agency medical or psychological consultants to testify, presumably because this would interfere with the State agency's ability to process disability claims in a timely and efficient manner. Some of the attorneys and other claimants' representatives who commented stated their belief that they would have to increase their requests for subpoenas if administrative law judges consider State agency medical and psychological consultant opinions in their decisions.

Response: The revisions we are making do not represent a change in policy. Sections 404.1527(f) and 416.927(f) of the regulations have stated since 1991 that medical opinions from State agency medical and psychological consultants are considered by administrative law judges and the Appeals Council, and we restated and clarified these provisions of the regulations in Social Security Ruling 96-6p in 1996. We do not anticipate that these final rules will increase the instances in which a claimant would wish to compel a State agency medical or psychological consultant to appear and testify (or to amplify his or her opinion through a voluntary appearance or responses to interrogatories.) These final rules also do not change the standards in our regulations under which administrative law judges determine whether to issue subpoenas. Paragraph (d)(1) of §§ 404.950 and 416.1450 states that administrative law judges may issue subpoenas in those situations "[w]hen it is reasonably necessary for the full presentation of a case." Paragraph (d)(2) provides that parties to a hearing may request a subpoena to compel testimony or documents, providing they file a written request with the administrative law judge at least 5 days before the hearing date. This request must justify the need for a subpoena by stating the "important facts that the witness or document is expected to prove" and by indicating "why these facts could not be proven without issuing a subpoena."

Comment: Two commenters expressed concern regarding our clarification in §§ 404.1502 and 416.902 of the term "medical source" and the concept of a "qualified medical source," when these terms are used in §§ 404.1519g and 416.919g in discussing the purchase of consultative examinations. They agreed that in many situations an audiologist may be the appropriate source to perform a consultative examination, but questioned whether the proposed rules are clear on whether other sources such as chiropractors or social workers are

also appropriate sources to perform these examinations.

Response: As we explain above, and as we explained in the preamble to the NPRM in discussing the amendments to §§ 404.1502 and 416.902 (62 FR 50270), under the rules in §§ 404.1519, 404.1519g, 416.919, and 416.919g, we may select a qualified medical source who is not an "acceptable medical source" to perform a consultative examination; e.g., an audiologist. As §§ 404.1519g(b) and 416.919g(b) provide, by "qualified" we mean that the medical source must be currently licensed in the State and have the training and experience to perform the type of examination or test we will request; the medical source must not be barred from participation in our program under the provisions of §§ 404.1503a and 416.903a; and the medical source must also have the equipment required to provide an adequate assessment and record of the existence and level of severity of the claimant's alleged impairments. Any medical source, which can include a chiropractor or social worker, that meets the requirements for being "qualified" under §§ 404.1519g and 416.919g may be an appropriate source to conduct a consultative examination.

Comment: One commenter questioned our inclusion of psychologists as "acceptable medical sources." The commenter noted that psychologists do not have medical training, they are not licensed to practice medicine, and they do not provide medical treatment. The commenter proposed that we use the term "medical and psychological sources" whenever we refer to physicians and psychologists under the same heading, as we use the phrase "medical and psychological consultants" in these regulations. The commenter also questioned our use of the term "medical expert" to include physicians and psychologists, and proposed that we substitute the terminology "medical experts or psychologists" for all references to "medical experts."

Response: "Licensed or certified psychologists" have been included in the list of "acceptable medical sources" in §§ 404.1513(a) and 416.913(a) since 1980, and their continuing inclusion does not represent a change in policy. (45 FR 55567, 55587, 55623, August 20, 1980.) In addition, the Act [42 U.S.C. 421], as well as §§ 404.1503(e) and 416.903(e) of the regulations, require that in initial determinations that the claimant is not disabled, and there is evidence that indicates the existence of a mental impairment, every reasonable effort should be made to ensure that a

qualified psychiatrist or psychologist has completed the medical portion of the case review and any applicable residual functional capacity assessment. Also, as we explain above, we are now changing the term "medical advisor" to "medical expert" in §§ 404.1512(b)(6) and 416.912(b)(6) and elsewhere, because the latter is the term we currently use to describe these nonexamining sources we consult at the administrative law judge and Appeals Council levels. We previously used the term "medical advisor" for many years in §§ 404.1512(b)(6) and 416.912(b)(6). This change in terminology does not represent a change in policy.

Comment: A number of commenters expressed concern that the proposed clarification in the definition of "medical source" in §§ 404.1502 and 416.902 to include "acceptable medical sources or other health care providers who are not acceptable medical sources," would prejudice the weighing of evidence from medical sources who are not "acceptable medical sources." These commenters note that many claimants do not, or cannot, receive their primary treatment from "acceptable medical sources," and the nature and frequency of their treatment or evaluation is more a function of staff or time availability, rather than the need for treatment. For example, many claimants receive their primary mental health treatment from therapists or social workers with only monthly visits with a physician for medication control. They note that the existing and the proposed rules exclude such sources from consideration as "treating sources."

Response: As the commenters note, we have now provided a definition of the term "acceptable medical source" in §§ 404.1502 and 416.902 by reference to §§ 404.1513(a) and 416.913(a), where the sources who are "acceptable medical sources" have been identified for many years. These sources have the training and experience necessary to provide the medical evidence that is required by the Act and these regulations to establish the existence of a medically determinable impairment or impairments. We recognize, however, that some individuals receive treatment from other sources, and our longstanding policy stated in §§ 404.1513(e) and 416.913(e) is to use information from these other sources, such as social welfare agencies, to help us to understand how an individual's impairment may affect his or her ability to work, once the existence of a medically determinable impairment has been established.

Comment: One commenter agreed with the clarification in §§ 404.1502 and 416.902 that a source that only examines and evaluates an individual on an ongoing basis, but who does not provide any treatment, may also be a "treating source." The commenter noted that many of the individuals making a claim for disability benefits do not have private insurance or resources to pay for medical care and must rely on the local public health care system, and many times the only "treatment" the public health care services provide for people with chronic physical or mental ailments are periodic examinations and evaluations.

Response: As the commenter has noted, we are clarifying the definition of "treating source" in §§ 404.1502 and 416.903 to be consistent with our longstanding use of the word "evaluation" in the definition of a "treating source" as a source "who has provided you with medical treatment or evaluation * * *."

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Therefore, they were not subject to OMB review. We have also determined that these rules meet the plain language requirement of Executive Order 12866 and the President's memorandum of June 1, 1998.

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 only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These regulations impose no additional reporting or recordkeeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, 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, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: February 14, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

For the reasons set out in the preamble, subpart P of part 404 and subpart I of part 416 of 20 CFR chapter III are amended as set forth below:

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

Subpart P—[Amended]

1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

2. Section 404.1502 is amended by republishing the introductory text, removing the terms “Source of record” and “you,” revising the definitions of “Medical sources” and “Treating source,” and adding definitions in the appropriate alphabetical order for the terms “Acceptable medical source,” “Nonexamining source,” “Nontreating source,” and “you or your” to read as follows:

§ 404.1502 General definitions and terms for this subpart.

As used in the subpart—

Acceptable medical source refers to one of the sources described in § 404.1513(a) who provides evidence about your impairments. It includes treating sources, nontreating sources, and nonexamining sources.

* * * * *

Medical sources refers to acceptable medical sources, or other health care providers who are not acceptable medical sources.

Nonexamining source means a physician, psychologist, or other acceptable medical source who has not examined you but provides a medical or other opinion in your case. At the administrative law judge hearing and Appeals Council levels of the administrative review process, it includes State agency medical and psychological consultants, other

program physicians and psychologists, and medical experts we consult. See § 404.1527.

Nontreating source means a physician, psychologist, or other acceptable medical source who has examined you but does not have, or did not have, an ongoing treatment relationship with you. The term includes an acceptable medical source who is a consultative examiner for us, when the consultative examiner is not your treating source. See § 404.1527.

* * * * *

Treating source means your own physician, psychologist, or other acceptable medical source who provides you, or has provided you, with medical treatment or evaluation and who has, or has had, an ongoing treatment relationship with you. Generally, we will consider that you have an ongoing treatment relationship with an acceptable medical source when the medical evidence establishes that you see, or have seen, the source with a frequency consistent with accepted medical practice for the type of treatment and/or evaluation required for your medical condition(s). We may consider an acceptable medical source who has treated or evaluated you only a few times or only after long intervals (e.g., twice a year) to be your treating source if the nature and frequency of the treatment or evaluation is typical for your condition(s). We will not consider an acceptable medical source to be your treating source if your relationship with the source is not based on your medical need for treatment or evaluation, but solely on your need to obtain a report in support of your claim for disability. In such a case, we will consider the acceptable medical source to be a nontreating source.

* * * * *

You or your means, as appropriate, the person who applies for benefits or for a period of disability, the person for whom an application is filed, or the person who is receiving benefits based on disability or blindness.

3. Section 404.1512 is amended by revising paragraph (b)(6) to read as follows:

§ 404.1512 Evidence of your impairment.

* * * * *

(b) * * *

* * * * *

(6) At the administrative law judge and Appeals Council levels, findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological consultants and other program physicians or psychologists,

and opinions expressed by medical experts we consult based on their review of the evidence in your case record. See §§ 404.1527(f)(2) and (f)(3).

* * * * *

4. Section 404.1513 is amended by revising the first sentence of paragraph (b)(6) and paragraph (c) to read as follows:

§ 404.1513 Medical evidence of your impairment.

* * * * *

(b) * * *

* * * * *

(6) A statement about what you can still do despite your impairment(s) based on the acceptable medical source's findings on the factors under paragraphs (b)(1) through (b)(5) of this section (except in statutory blindness claims). * * *

(c) *Statements about what you can still do.* At the administrative law judge and Appeals Council levels, we will consider residual functional capacity assessments made by State agency medical and psychological consultants and other program physicians and psychologists to be “statements about what you can still do” made by nonexamining physicians and psychologists based on their review of the evidence in the case record. Statements about what you can still do (based on the acceptable medical source's findings on the factors under paragraphs (b)(1) through (b)(5) of this section) should describe, but are not limited to, the kinds of physical and mental capabilities listed as follows (See §§ 404.1527 and 404.1545(c)):

(1) The acceptable medical source's opinion about your ability, despite your impairment(s), to do work-related activities such as sitting, standing, walking, lifting, carrying, handling objects, hearing, speaking, and traveling; and

(2) In cases of mental impairment(s), the acceptable medical source's opinion about your ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, coworkers, and work pressures in a work setting.

* * * * *

5. Section 404.1519 is amended by revising the first sentence to read as follows:

§ 404.1519 The consultative examination.

A consultative examination is a physical or mental examination or test purchased for you at our request and expense from a treating source or another medical source, including a pediatrician when appropriate. * * *

6. Section 404.1519g is amended by revising the last sentence of paragraph (a) and the first sentence of paragraph (c) to read as follows:

§ 404.1519g Who we will select to perform a consultative examination.

(a) * * * For a more complete list of medical sources, see § 404.1513.

* * * * *

(c) The medical source we choose may use support staff to help perform the consultative examination. * * *

7. Section 404.1519h is revised to read as follows:

§ 404.1519h Your treating source.

When in our judgment your treating source is qualified, equipped, and willing to perform the additional examination or tests for the fee schedule payment, and generally furnishes complete and timely reports, your treating source will be the preferred source to do the purchased examination. Even if only a supplemental test is required, your treating source is ordinarily the preferred source.

8. Section 404.1519i is revised to read as follows:

§ 404.1519i Other sources for consultative examinations.

We will use a medical source other than your treating source for a purchased examination or test in situations including, but not limited to, the following situations:

(a) Your treating source prefers not to perform such an examination or does not have the equipment to provide the specific data needed;

(b) There are conflicts or inconsistencies in your file that cannot be resolved by going back to your treating source;

(c) You prefer a source other than your treating source and have a good reason for your preference;

(d) We know from prior experience that your treating source may not be a productive source, e.g., he or she has consistently failed to provide complete or timely reports.

9. Section 404.1519j is revised to read as follows:

§ 404.1519j Objections to the medical source designated to perform the consultative examination.

You or your representative may object to your being examined by a medical source we have designated to perform a consultative examination. If there is a good reason for the objection, we will schedule the examination with another medical source. A good reason may be that the medical source we designated had previously represented an interest

adverse to you. For example, the medical source may have represented your employer in a workers' compensation case or may have been involved in an insurance claim or legal action adverse to you. Other things we will consider include: The presence of a language barrier, the medical source's office location (e.g., 2nd floor, no elevator), travel restrictions, and whether the medical source had examined you in connection with a previous disability determination or decision that was unfavorable to you. If your objection is that a medical source allegedly "lacks objectivity" in general, but not in relation to you personally, we will review the allegations. See § 404.1519s. To avoid a delay in processing your claim, the consultative examination in your case will be changed to another medical source while a review is being conducted. We will handle any objection to use of the substitute medical source in the same manner. However, if we had previously conducted such a review and found that the reports of the medical source in question conformed to our guidelines, we will not change your examination.

10. Section 404.1519k is amended by revising the introductory text to read as follows:

§ 404.1519k Purchase of medical examinations, laboratory tests, and other services.

We may purchase medical examinations, including psychiatric and psychological examinations, X-rays and laboratory tests (including specialized tests, such as pulmonary function studies, electrocardiograms, and stress tests) from a medical source.

* * * * *

11. Section 404.1519m is amended by revising the first and last sentences to read as follows:

§ 404.1519m Diagnostic tests or procedures.

We will request the results of any diagnostic tests or procedures that have been performed as part of a workup by your treating source or other medical source and will use the results to help us evaluate impairment severity or prognosis. * * * The responsibility for deciding whether to perform the examination rests with the medical source designated to perform the consultative examination.

12. Section 404.1519n is amended by revising the section heading and the first and last sentences of the introductory text, adding a heading to paragraph (a), revising the first sentence of paragraph (a) introductory text, revising the last two sentences of

paragraph (b), revising the second sentence of and adding two sentences at the end of paragraph (c)(6), and revising paragraphs (c)(7) and (e) to read as follows:

§ 404.1519n Informing the medical source of examination scheduling, report content, and signature requirements.

The medical sources who perform consultative examinations will have a good understanding of our disability programs and their evidentiary requirements. * * * We will fully inform medical sources who perform consultative examinations at the time we first contact them, and at subsequent appropriate intervals, of the following obligations:

(a) *Scheduling.* In scheduling full consultative examinations, sufficient time should be allowed to permit the medical source to take a case history and perform the examination, including any needed tests. * * *

* * * * *

(b) *Report content.* * * * The report should reflect your statement of your symptoms, not simply the medical source's statements or conclusions. The medical source's report of the consultative examination should include the objective medical facts as well as observations and opinions.

(c) * * *

* * * * *

(6) * * * This statement should describe the opinion of the medical source about your ability, despite your impairment(s), to do work-related activities, such as sitting, standing, walking, lifting, carrying, handling objects, hearing, speaking, and traveling; and, in cases of mental impairment(s), the opinion of the medical source about your ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, coworkers and work pressures in a work setting. Although we will ordinarily request, as part of the consultative examination process, a medical source statement about what you can still do despite your impairment(s), the absence of such a statement in a consultative examination report will not make the report incomplete. See § 404.1527; and

(7) In addition, the medical source will consider, and provide some explanation or comment on, your major complaint(s) and any other abnormalities found during the history and examination or reported from the laboratory tests. The history, examination, evaluation of laboratory test results, and the conclusions will represent the information provided by the medical source who signs the report.

* * * * *

(e) *Signature requirements.* All consultative examination reports will be personally reviewed and signed by the medical source who actually performed the examination. This attests to the fact that the medical source doing the examination or testing is solely responsible for the report contents and for the conclusions, explanations or comments provided with respect to the history, examination and evaluation of laboratory test results. The signature of the medical source on a report annotated "not proofed" or "dictated but not read" is not acceptable. A rubber stamp signature of a medical source or the medical source's signature entered by any other person is not acceptable.

13. Section 404.1519o is amended by revising the last sentence of paragraph (a) introductory text and the last sentence of paragraph (b) introductory text to read as follows:

§ 404.1519o When a properly signed consultative examination report has not been received.

* * * * *

(a) *When we will make determinations and decisions without a properly signed report.* * * * After we have made the determination or decision, we will obtain a properly signed report and include it in the file unless the medical source who performed the original consultative examination has died:

* * * * *

(b) *When we will not make determinations and decisions without a properly signed report.* * * * If the signature of the medical source who performed the original examination cannot be obtained because the medical source is out of the country for an extended period of time, or on an extended vacation, seriously ill, deceased, or for any other reason, the consultative examination will be rescheduled with another medical source:

* * * * *

14. Section 404.1519p is amended by revising paragraphs (b) and (c) to read as follows:

§ 404.1519p Reviewing reports of consultative examinations.

* * * * *

(b) If the report is inadequate or incomplete, we will contact the medical source who performed the consultative examination, give an explanation of our evidentiary needs, and ask that the medical source furnish the missing information or prepare a revised report.

(c) With your permission, or when the examination discloses new diagnostic information or test results that reveal a potentially life-threatening situation, we

will refer the consultative examination report to your treating source. When we refer the consultative examination report to your treating source without your permission, we will notify you that we have done so.

* * * * *

15. Section 404.1519s is amended by revising paragraph (e)(2) and the first sentence of paragraph (f)(6) to read as follows:

§ 404.1519s Authorizing and monitoring the consultative examination.

* * * * *

(e) * * *

(2) Any consultative examination provider with a practice directed primarily towards evaluation examinations rather than the treatment of patients; or

* * * * *

(f) * * *

(6) Procedures for providing medical or supervisory approval for the authorization or purchase of consultative examinations and for additional tests or studies requested by consulting medical sources. * * *

* * * * *

16. Section 404.1527 is amended by revising the section heading, the third sentence of paragraph (d)(2), the heading of paragraph (e), paragraph (e)(2), the heading and introductory text of paragraph (f), and paragraph (f)(2), by adding a sentence to the end of paragraph (d)(6), by adding introductory text to paragraph (e), and by adding paragraph (e)(3) to read as follows:

§ 404.1527 Evaluating opinion evidence.

* * * * *

(d) * * *

(2) *Treatment relationship.* * * * When we do not give the treating source's opinion controlling weight, we apply the factors listed in paragraphs (d)(2)(i) and (d)(2)(ii) of this section, as well as the factors in paragraphs (d)(3) through (d)(6) of this section in determining the weight to give the opinion. * * *

* * * * *

(6) *Other factors.* * * * For example, the amount of understanding of our disability programs and their evidentiary requirements that an acceptable medical source has, regardless of the source of that understanding, and the extent to which an acceptable medical source is familiar with the other information in your case record are relevant factors that we will consider in deciding the weight to give to a medical opinion.

(e) *Medical source opinions on issues reserved to the Commissioner.* Opinions

on some issues, such as the examples that follow, are not medical opinions, as described in paragraph (a)(2) of this section, but are, instead, opinions on issues reserved to the Commissioner because they are administrative findings that are dispositive of a case; *i.e.*, that would direct the determination or decision of disability.

* * * * *

(2) *Other opinions on issues reserved to the Commissioner.* We use medical sources, including your treating source, to provide evidence, including opinions, on the nature and severity of your impairment(s). Although we consider opinions from medical sources on issues such as whether your impairment(s) meets or equals the requirements of any impairment(s) in the Listing of Impairments in appendix 1 to this subpart, your residual functional capacity (see §§ 404.1545 and 404.1546), or the application of vocational factors, the final responsibility for deciding these issues is reserved to the Commissioner.

(3) We will not give any special significance to the source of an opinion on issues reserved to the Commissioner described in paragraphs (e)(1) and (e)(2) of this section.

(f) *Opinions of nonexamining sources.* We consider all evidence from nonexamining sources to be opinion evidence. When we consider the opinions of nonexamining sources, we apply the rules in paragraphs (a) through (e) of this section. In addition, the following rules apply to State agency medical and psychological consultants, other program physicians and psychologists, and medical experts we consult in connection with administrative law judge hearings and Appeals Council review:

* * * * *

(2) Administrative law judges are responsible for reviewing the evidence and making findings of fact and conclusions of law. They will consider opinions of State agency medical or psychological consultants, other program physicians and psychologists, and medical experts as follows:

(i) Administrative law judges are not bound by any findings made by State agency medical or psychological consultants, or other program physicians or psychologists. However, State agency medical and psychological consultants and other program physicians and psychologists are highly qualified physicians and psychologists

who are also experts in Social Security disability evaluation. Therefore, administrative law judges must consider findings of State agency medical and psychological consultants or other program physicians or psychologists as opinion evidence, except for the ultimate determination about whether you are disabled. See § 404.1512(b)(6).

(ii) When an administrative law judge considers findings of a State agency medical or psychological consultant or other program physician or psychologist, the administrative law judge will evaluate the findings using relevant factors in paragraphs (a) through (e) of this section, such as the physician's or psychologist's medical specialty and expertise in our rules, the supporting evidence in the case record, supporting explanations provided by the physician or psychologist, and any other factors relevant to the weighing of the opinions. Unless the treating source's opinion is given controlling weight, the administrative law judge must explain in the decision the weight given to the opinions of a State agency medical or psychological consultant or other program physician or psychologist, as the administrative law judge must do for any opinions from treating sources, nontreating sources, and other nonexamining sources who do not work for us.

(iii) Administrative law judges may also ask for and consider opinions from medical experts on the nature and severity of your impairment(s) and on whether your impairment(s) equals the requirements of any impairment listed in appendix 1 to this subpart. When administrative law judges consider these opinions, they will evaluate them using the rules in paragraphs (a) through (e) of this section.

* * * * *

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

Subpart I—[Amended]

17. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a) and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

18. Section 416.902 is amended by republishing the introductory text, removing the terms “Secretary,” “Source of record,” and “You,” revising

the definitions of “Medical sources” and “Treating source,” and adding definitions in the appropriate alphabetical order for the terms “Acceptable medical source,” “Nonexamining source,” “Nontreating source,” and “You or your” to read as follows:

§ 416.902 General definitions and terms for this subpart.

As used in the subpart—

Acceptable medical source refers to one of the sources described in § 416.913(a) who provides evidence about your impairments. It includes treating sources, nontreating sources, and nonexamining sources.

* * * * *

Medical sources refers to acceptable medical sources, or other health care providers who are not acceptable medical sources.

Nonexamining source means a physician, psychologist, or other acceptable medical source who has not examined you but provides a medical or other opinion in your case. At the administrative law judge hearing and Appeals Council levels of the administrative review process, it includes State agency medical and psychological consultants, other program physicians and psychologists, and medical experts we consult. See § 416.927.

Nontreating source means a physician, psychologist, or other acceptable medical source who has examined you but does not have, or did not have, an ongoing treatment relationship with you. The term includes an acceptable medical source who is a consultative examiner for us, when the consultative examiner is not your treating source. See § 416.927.

* * * * *

Treating source means your own physician, psychologist, or other acceptable medical source who provides you, or has provided you, with medical treatment or evaluation and who has, or has had, an ongoing treatment relationship with you. Generally, we will consider that you have an ongoing treatment relationship with an acceptable medical source when the medical evidence establishes that you see, or have seen, the source with a frequency consistent with accepted medical practice for the type of treatment and/or evaluation required for your medical condition(s). We may consider an acceptable medical source who has treated or evaluated you only a few times or only after long intervals (e.g., twice a year) to be your treating source if the nature and frequency of the treatment or evaluation is typical for

your condition(s). We will not consider an acceptable medical source to be your treating source if your relationship with the source is not based on your medical need for treatment or evaluation, but solely on your need to obtain a report in support of your claim for disability. In such a case, we will consider the acceptable medical source to be a nontreating source.

* * * * *

You or your means, as appropriate, the person who applies for benefits, the person for whom an application is filed, or the person who is receiving benefits based on disability or blindness.

19. Section 416.912 is amended by revising paragraph (b)(6) to read as follows:

§ 416.912 Evidence of your impairment.

* * * * *

(b) * * *

(6) At the administrative law judge and Appeals Council levels, findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological consultants and other program physicians or psychologists, and opinions expressed by medical experts we consult based on their review of the evidence in your case record. See §§ 416.927(f)(2) and (f)(3).

* * * * *

20. Section 416.913 is amended by revising the first sentence of paragraph (b)(6) and paragraph (c) to read as follows:

§ 416.913 Medical evidence of your impairment.

* * * * *

(b) * * *

(6) A statement about what you can still do despite your impairment(s) based on the acceptable medical source's findings on the factors under paragraphs (b)(1) through (b)(5) of this section (except in statutory blindness claims). * * *

(c) *Statements about what you can still do.* At the administrative law judge and Appeals Council levels, we will consider residual functional capacity assessments made by State agency medical and psychological consultants and other program physicians and psychologists to be “statements about what you can still do” made by nonexamining physicians and psychologists based on their review of the evidence in the case record. Statements about what you can still do (based on the acceptable medical source's findings on the factors under paragraphs (b)(1) through (b)(5) of this

section) should describe, but are not limited to, the kinds of physical and mental capabilities listed as follows (See §§ 416.927 and 416.945(c)):

(1) If you are an adult, the acceptable medical source's opinion about your ability, despite your impairment(s), to do work-related activities such as sitting, standing, walking, lifting, carrying, handling objects, hearing, speaking, and traveling;

(2) If you are an adult, in cases of mental impairment(s), the acceptable medical source's opinion about your ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, coworkers, and work pressures in a work setting; and

(3) If you are a child, the acceptable medical source's opinion about your functional limitations in learning, motor functioning, performing self-care activities, communicating, socializing, and completing tasks (and, if you are a newborn or young infant from birth to age 1, responsiveness to stimuli).

* * * * *

21. Section 416.919 is amended by revising the first sentence to read as follows:

§ 416.919 The consultative examination.

A consultative examination is a physical or mental examination or test purchased for you at our request and expense from a treating source or another medical source, including a pediatrician when appropriate. * * *

22. Section 416.919g is amended by revising the last sentence of paragraph (a) and the first sentence of paragraph (c) to read as follows:

§ 416.919g Who we will select to perform a consultative examination.

(a) * * * For a more complete list of medical sources, see § 416.913.

* * * * *

(c) The medical source we choose may use support staff to help perform the consultative examination. * * *

23. Section 416.919h is revised to read as follows:

§ 416.919h Your treating source.

When in our judgment your treating source is qualified, equipped, and willing to perform the additional examination or tests for the fee schedule payment, and generally furnishes complete and timely reports, your treating source will be the preferred source to do the purchased examination. Even if only a supplemental test is required, your treating source is ordinarily the preferred source.

24. Section 416.919i is revised to read as follows:

§ 416.919i Other sources for consultative examinations.

We will use a medical source other than your treating source for a purchased examination or test in situations including, but not limited to, the following situations:

(a) Your treating source prefers not to perform such an examination or does not have the equipment to provide the specific data needed;

(b) There are conflicts or inconsistencies in your file that cannot be resolved by going back to your treating source;

(c) You prefer a source other than your treating source and have a good reason for your preference;

(d) We know from prior experience that your treating source may not be a productive source, e.g., he or she has consistently failed to provide complete or timely reports.

25. Section 416.919j is revised to read as follows:

§ 416.919j Objections to the medical source designated to perform the consultative examination.

You or your representative may object to your being examined by a medical source we have designated to perform a consultative examination. If there is a good reason for the objection, we will schedule the examination with another medical source. A good reason may be that the medical source we designated had previously represented an interest adverse to you. For example, the medical source may have represented your employer in a workers' compensation case or may have been involved in an insurance claim or legal action adverse to you. Other things we will consider include: The presence of a language barrier, the medical source's office location (e.g., 2nd floor, no elevator), travel restrictions, and whether the medical source had examined you in connection with a previous disability determination or decision that was unfavorable to you. If your objection is that a medical source allegedly "lacks objectivity" in general, but not in relation to you personally, we will review the allegations. See § 416.919s. To avoid a delay in processing your claim, the consultative examination in your case will be changed to another medical source while a review is being conducted. We will handle any objection to use of the substitute medical source in the same manner. However, if we had previously conducted such a review and found that the reports of the medical source in question conformed to our guidelines, we will not change your examination.

26. Section 416.919k is amended by revising the introductory text to read as follows:

§ 416.919k Purchase of medical examinations, laboratory tests, and other services.

We may purchase medical examinations, including psychiatric and psychological examinations, X-rays and laboratory tests (including specialized tests, such as pulmonary function studies, electrocardiograms, and stress tests) from a medical source.

* * * * *

27. Section 416.919m is amended by revising the first and last sentences to read as follows:

§ 416.919m Diagnostic tests or procedures.

We will request the results of any diagnostic tests or procedures that have been performed as part of a workup by your treating source or other medical source and will use the results to help us evaluate impairment severity or prognosis. * * * The responsibility for deciding whether to perform the examination rests with the medical source designated to perform the consultative examination.

28. Section 416.919n is amended by revising the section heading and the first and last sentences of the introductory text, adding a heading to paragraph (a), revising the first sentence of paragraph (a) introductory text, revising the last two sentences of paragraph (b), revising the second and third sentences of and adding two sentences at the end of paragraph (c)(6), and revising paragraphs (c)(7) and (e) to read as follows:

§ 416.919n Informing the medical source of examination scheduling, report content, and signature requirements.

The medical sources who perform consultative examinations will have a good understanding of our disability programs and their evidentiary requirements. * * * We will fully inform medical sources who perform consultative examinations at the time we first contact them, and at subsequent appropriate intervals, of the following obligations:

(a) *Scheduling.* In scheduling full consultative examinations, sufficient time should be allowed to permit the medical source to take a case history and perform the examination, including any needed tests. * * *

* * * * *

(b) *Report content.* * * * The report should reflect your statement of your symptoms, not simply the medical source's statements or conclusions. The

medical source's report of the consultative examination should include the objective medical facts as well as observations and opinions.

(c) * * *

(6) * * * If you are an adult, this statement should describe the opinion of the medical source about your ability, despite your impairment(s), to do work-related activities, such as sitting, standing, walking, lifting, carrying, handling objects, hearing, speaking, and traveling; and, in cases of mental impairment(s), the opinion of the medical source about your ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, coworkers and work pressures in a work setting. If you are a child, this statement should describe the opinion of the medical source about your functional limitations in learning, motor functioning, performing self-care activities, communicating, socializing, and completing tasks (and, if you are a newborn or young infant from birth to age 1, responsiveness to stimuli). Although we will ordinarily request, as part of the consultative examination process, a medical source statement about what you can still do despite your impairment(s), the absence of such a statement in a consultative examination report will not make the report incomplete. See § 416.927; and

(7) In addition, the medical source will consider, and provide some explanation or comment on, your major complaint(s) and any other abnormalities found during the history and examination or reported from the laboratory tests. The history, examination, evaluation of laboratory test results, and the conclusions will represent the information provided by the medical source who signs the report.

* * * * *

(e) *Signature requirements.* All consultative examination reports will be personally reviewed and signed by the medical source who actually performed the examination. This attests to the fact that the medical source doing the examination or testing is solely responsible for the report contents and for the conclusions, explanations or comments provided with respect to the history, examination and evaluation of laboratory test results. The signature of the medical source on a report annotated "not proofed" or "dictated but not read" is not acceptable. A rubber stamp signature of a medical source or the medical source's signature entered by any other person is not acceptable.

29. Section 416.919o is amended by revising the last sentence of paragraph (a) introductory text and the last sentence of paragraph (b) introductory text to read as follows:

§ 416.919o When a properly signed consultative examination report has not been received.

* * * * *

(a) *When we will make determinations and decisions without a properly signed report.* * * * After we have made the determination or decision, we will obtain a properly signed report and include it in the file unless the medical source who performed the original consultative examination has died:

* * * * *

(b) *When we will not make determinations and decisions without a properly signed report.* * * * If the signature of the medical source who performed the original examination cannot be obtained because the medical source is out of the country for an extended period of time, or on an extended vacation, seriously ill, deceased, or for any other reason, the consultative examination will be rescheduled with another medical source:

* * * * *

30. Section 416.919p is amended by revising paragraphs (b) and (c) to read as follows:

§ 416.919p Reviewing reports of consultative examinations.

* * * * *

(b) If the report is inadequate or incomplete, we will contact the medical source who performed the consultative examination, give an explanation of our evidentiary needs, and ask that the medical source furnish the missing information or prepare a revised report.

(c) With your permission, or when the examination discloses new diagnostic information or test results that reveal a potentially life-threatening situation, we will refer the consultative examination report to your treating source. When we refer the consultative examination report to your treating source without your permission, we will notify you that we have done so.

* * * * *

31. Section 416.919s is amended by revising paragraph (e)(2) and the first sentence of paragraph (f)(6) to read as follows:

§ 416.919s Authorizing and monitoring the consultative examination.

* * * * *

(e) * * *

(2) Any consultative examination provider with a practice directed primarily towards evaluation examinations rather than the treatment of patients; or

* * * * *

(f) * * *

(6) Procedures for providing medical or supervisory approval for the authorization or purchase of consultative examinations and for additional tests or studies requested by consulting medical sources. * * *

* * * * *

32. Section 416.927 is amended by revising the section heading, the third sentence of paragraph (d)(2), the heading of paragraph (e), paragraph (e)(2), the heading and introductory text of paragraph (f), and paragraph (f)(2), by adding a sentence to the end of paragraph (d)(6), by adding introductory text to paragraph (e), and by adding paragraph (e)(3) to read as follows:

§ 416.927 Evaluating opinion evidence.

* * * * *

(d) * * *

(2) *Treatment relationship.* * * * When we do not give the treating source's opinion controlling weight, we apply the factors listed in paragraphs (d)(2)(i) and (d)(2)(ii) of this section, as well as the factors in paragraphs (d)(3) through (d)(6) of this section in determining the weight to give the opinion. * * *

* * * * *

(6) *Other factors.* * * * For example, the amount of understanding of our disability programs and their evidentiary requirements that an acceptable medical source has, regardless of the source of that understanding, and the extent to which an acceptable medical source is familiar with the other information in your case record are relevant factors that we will consider in deciding the weight to give to a medical opinion.

(e) *Medical source opinions on issues reserved to the Commissioner.* Opinions on some issues, such as the examples that follow, are not medical opinions, as described in paragraph (a)(2) of this section, but are, instead, opinions on issues reserved to the Commissioner because they are administrative findings that are dispositive of a case; *i.e.*, that would direct the determination or decision of disability.

* * * * *

(2) *Other opinions on issues reserved to the Commissioner.* We use medical sources, including your treating source,

to provide evidence, including opinions, on the nature and severity of your impairment(s). Although we consider opinions from medical sources on issues such as whether your impairment(s) meets or equals the requirements of any impairment(s) in the Listing of Impairments in appendix 1 to subpart P of part 404 of this chapter, your residual functional capacity (see §§ 416.945 and 416.946), or the application of vocational factors, the final responsibility for deciding these issues is reserved to the Commissioner.

(3) We will not give any special significance to the source of an opinion on issues reserved to the Commissioner described in paragraphs (e)(1) and (e)(2) of this section.

(f) *Opinions of nonexamining sources.* We consider all evidence from nonexamining sources to be opinion evidence. When we consider the opinions of nonexamining sources, we apply the rules in paragraphs (a) through (e) of this section. In addition, the following rules apply to State agency medical and psychological consultants, other program physicians and psychologists, and medical experts we consult in connection with administrative law judge hearings and Appeals Council review:

* * * * *

(2) Administrative law judges are responsible for reviewing the evidence and making findings of fact and conclusions of law. They will consider opinions of State agency medical or psychological consultants, other program physicians and psychologists, and medical experts as follows:

(i) Administrative law judges are not bound by any findings made by State agency medical or psychological consultants, or other program physicians or psychologists. However, State agency medical and psychological consultants and other program physicians and psychologists are highly qualified physicians and psychologists who are also experts in Social Security disability evaluation. Therefore, administrative law judges must consider findings of State agency medical and psychological consultants or other program physicians or psychologists as opinion evidence, except for the ultimate determination about whether you are disabled. See § 416.912(b)(6).

(ii) When an administrative law judge considers findings of a State agency medical or psychological consultant or other program physician or psychologist, the administrative law judge will evaluate the findings using relevant factors in paragraphs (a)

through (e) of this section, such as the physician's or psychologist's medical specialty and expertise in our rules, the supporting evidence in the case record, supporting explanations provided by the physician or psychologist, and any other factors relevant to the weighing of the opinions. Unless the treating source's opinion is given controlling weight, the administrative law judge must explain in the decision the weight given to the opinions of a State agency medical or psychological consultant or other program physician or psychologist, as the administrative law judge must do for any opinions from treating sources, nontreating sources, and other nonexamining sources who do not work for us.

(iii) Administrative law judges may also ask for and consider opinions from medical experts on the nature and severity of your impairment(s) and on whether your impairment(s) equals the requirements of any impairment listed in appendix 1 to subpart P of part 404 of this chapter. When administrative law judges consider these opinions, they will evaluate them using the rules in paragraphs (a) through (e) of this section.

* * * * *

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 20

[Docket No. 98N-0518]

Public Information; Communications With State and Foreign Government Officials

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing final regulations governing communications with State and foreign government officials. The rule states that FDA may disclose confidential commercial information to international organizations having responsibility to facilitate global or regional harmonization of standards and requirements. These disclosures will, in almost all instances, occur only with the consent of the person who submitted the confidential commercial information to FDA. The rule also streamlines the process for FDA officials to disclose

certain nonpublic, predecisional documents (such as draft rules and guidance documents) to State and foreign government officials. The rule does not alter current procedures for sharing documents that contain confidential commercial information. These changes are intended to facilitate information exchanges with State and foreign governments and certain international organizations.

DATES: This rule becomes effective on May 22, 2000.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy, Planning, and Legislation (HF-23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-3380.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of July 27, 1998 (63 FR 40069), FDA published a proposed rule that would facilitate its communications with foreign governments. Current FDA regulations at § 20.89 (21 CFR 20.89) permit FDA to disclose confidential commercial information and nonpublic, predecisional documents to foreign governments. Nonpublic, predecisional documents are disclosed under § 20.89(d) only if they do not contain unredacted confidential commercial information (such as draft FDA guidance documents or regulations). These disclosures are subject to certain safeguards. These safeguards include obtaining a written statement from the foreign government agency establishing that agency's authority to protect the confidential commercial information from public disclosure, and a written commitment not to disclose such information without written permission from the person who created or submitted the confidential commercial information (the "sponsor") or written confirmation from FDA that the information is no longer confidential. Similar safeguards exist regarding exchanges of nonpublic, predecisional information.

A similar regulation for communications with State government officials exists at § 20.88 (21 CFR 20.88).

FDA published the proposed rule to accomplish several goals. First, the proposed rule would amend §§ 20.88(e)(1)(i) and 20.89(d)(1)(i) to eliminate the requirement for the written statement and written commitment for exchanges involving solely nonpublic, predecisional information. As explained in the preamble to the proposed rule, it appears that requiring written