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SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2006–0109]

RIN 0960–AH17

Consultative Examination—Annual Onsite Review of Medical Providers

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are revising the threshold billing amount that triggers annual on-site reviews of medical providers who conduct consultative examinations (CEs) for our disability programs under titles II and XVI of the Social Security Act (Act). The revision will raise the threshold amount to reflect the increase in billing amounts since we first established the threshold amount in 1991. We expect the revised threshold amount will reestablish the level of oversight activity we required under our original rules.

DATES: These regulations are effective July 12, 2010.

FOR FURTHER INFORMATION CONTACT: Richard Bresnick, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1758. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

Why are we revising our rules?

We are making final the rules we proposed in the notice of proposed rulemaking (NPRM) published in the **Federal Register** on March 20, 2007. 72 FR 13053. Since 1991, our regulations have required each State agency that makes disability determinations for us to provide comprehensive oversight management of its CE program with special emphasis on key providers. Sections 404.1519s(d) and 416.919s(d). A CE is a medical examination or test that we purchase at our expense when we need additional information to make a disability determination, and we cannot obtain that information from existing medical sources. Sections 404.1517, 404.1519, 416.917, and 416.919.

As part of its oversight management of the CE program, each State agency must conduct annual on-site reviews of key providers. Sections 404.1519s(f)(11) and 416.919s(f)(11). Our regulations define a "key consultative examination provider" as a provider that meets at least one of three specified conditions. Sections 404.1519s(e) and 416.919s(e). Those conditions are:

(1) Any CE provider with an estimated annual billing to the Social Security disability programs of at least $100,000; or

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

(3) Any CE provider that does not meet the above criteria, but is one of the top five CE providers in the State by dollar volume, as evidenced by prior year data.

We are increasing the threshold billing amount in the first of these conditions to $150,000, the first change in the threshold since we published this provision in 1991. Due to the rise in CE costs since 1991, many providers who perform relatively few CEs nevertheless meet the current $100,000 threshold and are subject to mandatory on-site reviews. Raising the threshold amount to $150,000 will allow us to focus our limited resources on annual reviews of our largest CE providers.

We set the threshold at $150,000 by multiplying the current $100,000 threshold by the percentage increase in the consumer price index for urban wage earners and clerical workers from 1991 (134.3) to November 2006 (196.8) (the most recent information available at the time we proposed the revision). For administrative convenience, we rounded the resulting amount ($146,537.60) to $150,000. The CPI was 211.3 in October 2009, which would correspond to a threshold of $157,334. However, we believe that $150,000 remains an appropriate threshold for purposes of the on-site review requirement.

Public Comments

In the NPRM we published on March 20, 2007, we provided the public with a 60-day period in which to comment. The comment period ended on May 21, 2007.

We received one comment, from a professional organization representing adjudicators of claims for disability. We carefully considered the comment. Because the comment was long, we have condensed, summarized, and paraphrased it. We have tried to summarize the commenter's views accurately and to respond to all of the significant issues raised by the commenter that were within the scope of these rules.

Comment: The commenter recognized that the costs for performing CEs have risen and that some high volume CE providers may reach the $100,000 threshold amount sooner than in previous years. However, the commenter believed that raising the threshold amount could lead to some key providers furnishing "less than quality service" to the disability program. The commenter indicated that some of the smaller States currently do not have providers that meet the $100,000 threshold amount and only do reviews of the top five providers in their States in accordance with the current regulations. The commenter also stated that its experience has shown that the current regulations allow some high volume providers in larger States to not have on-site reviews. The commenter believed that more, not fewer, on-site reviews of high volume CE providers need to be conducted and increasing the threshold amount for performing on-site reviews from $100,000 to $150,000 would take away the possibility of reviewing some high volume CE providers in the future. The commenter believed that the State agencies need to continue to monitor high volume CE providers on a regular basis to maintain the quality and consistency of CEs. Thus, it favored expanding, rather than limiting, the situations in which State

agencies review high volume CE providers. The commenter also expressed concern that increasing the CE threshold amount may create the impression that oversight of CEs is not important.

Response: We disagree with the commenter's assertions. First, we do not believe that raising the threshold amount will lead to some key providers furnishing "less than quality service" to the disability program. Rather, we believe this revision will allow us to fulfill our stewardship obligations to the disability programs, while also ensuring that we use our scarce administrative resources as efficiently as possible. As for the commenter's assertion that the revision will lead to fewer on-site reviews of high volume providers in large States, the commenter is correct that we will no longer require automatic review of CE providers whose billing falls between $100,000 and $149,999. However, we will still require States to review all high volume providers as we now define that term. In addition, our regulations require the State agencies to maintain procedures for handling complaints. Sections 404.1519s(f)(9) and 416.919s(f)(9). By reducing the number of required reviews, we believe that the State agencies will be able to conduct more on-site reviews sooner in situations where credible complaints have been lodged against mid-tier and smaller CE providers. We can better fulfill our stewardship responsibilities by providing the State agencies with the ability to target CE providers with documented problems for on-site reviews regardless of their volume. Thus, we are not making any changes to the rules we proposed.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were subject to OMB review.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they only directly affect States. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final rules will impose no additional reporting or recordkeeping requirements requiring OMB clearance.

Federalism and the Unfunded Mandates Reform Act

We have reviewed the final rules under the threshold criteria of Executive Order 13132 (Federalism) and the Unfunded Mandates Reform Act of 1995. These final rules would change the threshold billing amount above which the State agencies that make determinations of disability for the Commissioner under titles II and XVI of the Act perform an annual on-site review of CE providers. Although the State agencies perform these reviews, the Social Security Administration fully funds the necessary costs of providing this service. We have determined that these final rules would not have substantial direct effects on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

(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).

Michael J. Astrue,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending subpart P of part 404 and subpart I of part 416 of chapter III of title 20 of the Code of Federal Regulations 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 is revised to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a), (i) and (j), 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), (i) and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Revise paragraph (e)(1) of § 404.1519s to read as follows:

§ 404.1519s Authorizing and monitoring the consultative examination.

* * * * *

(e) * * *

(1) Any consultative examination provider with an estimated annual billing to the disability programs we administer of at least $150,000; or

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

Subpart I—[Amended]

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

Authority: Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p) and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), 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).

■ 4. Revise paragraph (e)(1) of § 416.919s to read as follows:

§ 416.919s Authorizing and monitoring the consultative examination.

* * * * *

(e) * * *

(1) Any consultative examination provider with an estimated annual billing to the disability programs we administer of at least $150,000; or

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[FR Doc. 2010–14070 Filed 6–9–10; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2530

RIN 1210–AB15

Final Rule Relating to Time and Order of Issuance of Domestic Relations Orders

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document finalizes an interim final rule published on March 7, 2007, which was adopted in response to the specific statutory directive contained in section 1001 of the Pension Protection Act of 2006, Public Law No.